United States Court of Appeals

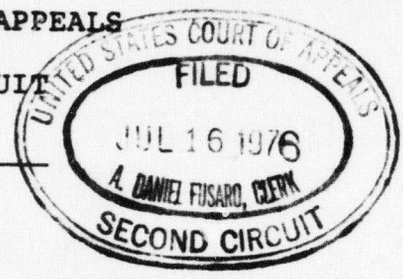
for the Second Circuit

JOINT APPENDIX

76-7222

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT



In the Matter of

GRAND BAHAMA PETROLEUM COMPANY, LIMITED,

Petitioner-Appellee,

-against-

ASIATIC PETROLEUM CORPORATION,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-7222

In the Matter of

GRAND BAHAMA PETROLEUM COMPANY, LIMITED,

Petitioner-Appellee,

-against-

ASIATIC PETROLEUM CORPORATION,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RELEVANT DOCKET ENTRIES

Date	Filings-Proceedings
2/25/76	Filed Petition to Compel Arbitration.
2/25/76	Filed petitioner's Affidavit and Order to Show Cause why arbitration should not be compelled; signed by Stewart, J.
3/1/76	Filed petitioner's Affidavit and Order to Show Cause with a Stay; signed by Stewart, J.
3/1/76	Filed respondent's Notice of Taking Deposition of petitioner Grand Bahama Petroleum Company Limited.

RELEVANT DOCKET ENTRIES

Date	Filings-Proceedings
3/5/76	Filed respondent's Notice of Taking Deposition of petitioner Grand Bahama Petroleum Company.
3/5/76	Filed respondent's Notice of Taking Deposition of Andre von Kuhn.
3/8/76	Filed petitioner's Affidavit and Order to Show Cause with a Stay; signed by Stewart, J.
3/11/76	Filed respondent's Affidavit in Opposition to Petitioner's Application for an Order Directing Respondent to Arbitrate and in Support of Motion to Dismiss.
3/12/76	Filed Memorandum No. 44047 granting petitioner's motion to quash the notice of deposition directed at adducing evidence of petitioner's doing business in New York for purposes of § 1312 preclusion; SO ORDERED, Stewart, J.
3/22/76	Filed respondent's Motion to Dismiss, with Memorandum Endorsed denying respondent's motion to dismiss; SO ORDERED, Stewart, J.
3/29/76	Filed Memorandum No. 44132 granting respondent's petition for 1292(b) certification; SO ORDERED, Stewart, J.
5/5/76	Filed copy of U.S. Court of Appeals, 2d Circuit, Order granting respondent leave to appeal pursuant to 28 U.S.C. § 1292(b).
5/24/76	Filed Notice that the original Record on Appeal has been certified and transmitted to the U.S. Court of Appeals for the Second Circuit.

PETITION TO COMPEL
ARBITRATION

United States District Court

Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

76 Civ.

Respondent.

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

- -x

The Petition

Petitioner alleges:

Jurisdiction

1. Petitioner, Grand Bahama Petroleum Company, Limited ("Petco") is a corporation organized and existing under the laws of the Commonwealth of the Bahamas, with offices and place of business in Freeport, Bahamas. Petco is a partner or co-venturer in a refinery located at Freeport.

2. On information and belief respondent, Asiatic Petroleum Corporation ("Asiatic") is a corporation organized and existing under the laws of the State of Delaware, with principal offices at 1 Rockefeller Plaza, New York, N.Y.

3. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000; this Court has jurisdiction by reason of diversity of citizenship and requisite amount in controversy.

PETITION TO COMPEL ARBITRATION

Nature of Proceeding

4. This is a proceeding commenced pursuant to 9 U.S.C. A. Secs. 1 et seq. to compel Asiatic to arbitrate its alleged claims against Petco as required by written agreement between Asiatic and Petco and to restrain and enjoin Asiatic from prosecuting or continuing to prosecute any action to enforce said alleged claims.

Arbitration is Mandated

5. By written agreement dated April 1, 1972 (Exhibit A to Manning affdvt.) Asiatic agreed to sell and deliver to Petco (plus or minus 10% at Petco's option) 32,000 barrels per day of No. 6 fuel oil and Petco agreed to purchase, accept and pay for said No. 6 fuel oil. The said No. 6 fuel oil was to be delivered during during the period April 1, 1972 through March 31, 1978 in accordance with the various terms and provisions of said agreement.

6. The "General Conditions of Sale-F.O.B." of said Asiatic-Petco agreement expressly provided in paragraphs 11 and 12 thereof as follows:-

> "11. Arbitration
>
> Except as otherwise provided herein, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in the City of New York, New York, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof."
>
> "12. Governing Law
>
> This Agreement shall be deemed to have been made in New York, New York and shall be construed and shall take effect in accordance with the law of the State of New York."

PETITION TO COMPEL
ARBITRATION

7. Paragraph 2(d)(iv) of the Asiatic-Petco agreement provided, among other things, that the price for the No. 6 fuel oil should be renegotiated during the fourth quarter of 1974 and

> "if the parties cannot agree on a new price for such oils either party shall have the right to terminate the Agreement upon sixty-days written notice to the other."

8. On or about September 13, 1974, Asiatic served upon Petco written notice (copy annexed as Exhibit B to Manning affdvt.) that it desired to renegotiate the price of the oil to be supplied to Petco during the calendar year 1975. By writing dated December 4, 1974, Asiatic advised Petco that it appeared unlikely that agreement would be reached on price of the oil for the year 1975, and that if no agreement were reached by December 31, 1975 Asiatic would terminate the Asiatic-Petco agreement dated April 1, 1972 effective March 2, 1975 (copy annexed as C to Manning affdvt).

9. On or about December 18, 1974, Petco served and filed a demand for arbitration of a dispute under the Asiatic-Petco agreement before the American Arbitration Association (AAA); and at the request of Asiatic's counsel Petco amplified its demand to set forth that the breaches involved Asiatic's failure to negotiate in good faith; its attempt to impose an unreasonable increase in price as a condition to continuation of the contract, and similar breaches (copy of amplification annexed as Exhibit I to Manning affdvt).

10. On or about January 10, 1975, Asiatic served upon Petco written notice of termination of the Asiatic-Petco agreement dated April 1, 1972, effective March 2, 1975 (copy annexed as Exhibit G to Manning affdvt.).

11. Petco sought preliminary injunctive relief in the Supreme Court, New York County, requiring Asiatic to continue to deliver oil beyond March 2, 1975, subject to any award of the arbitrators. Said injunctive relief was denied.

12. Accordingly, Petco requested and obtained an expedited preliminary hearing before the arbitrators to seek an interim determination requiring Asiatic to continue to deliver the No. 6 fuel oil pending the determination of the arbitration and subject to the arbitrators' award. At the preliminary hearing held on February 28, 1975, the arbitrators suggested that the parties enter into an arrangement pending and subject to the award under which Asiatic would continue deliveries of No. 6 fuel oil to Petco from and after March 2, 1975. The attorneys for the respective parties agreed, after consultation with their clients, to accept the suggestion of the arbitrators (copy of pages of transcript annexed as Exhibit K to Manning affdvt.). The attorneys for the respective parties then dictated into the record before the arbitrators the arrangement pursuant to which Asiatic would continue to deliver No. 6 fuel oil to Petco after March 2, 1975 pending the award of the arbitrators and subject to such award (copy of transcript annexed as Exhibit L to Manning affdvt.).

13. Under date of April 11, 1975, Asiatic's attorneys wrote to Petco's attorneys (copy annexed as Exhibit M to Manning affdvt.) complaining about alleged failure to nominate vessels to lift the No. 6 fuel oil after March 2, 1975. Petco's counsel replied to the letter of Asiatic's counsel under date of April 15, 1975 (copy annexed as Exhibit N to Manning affdvt.). As a result of this exchange of letters a second emergency meeting was held before the arbitrators on April 18, 1975.

14. At that meeting various changes were made to the agreement dictated into the record on February 28, 1975 and the parties agreed at that time on the terms of what should be contained in a written escrow agreement (pursuant to which Petco would deposit a specified sum of money for each barrel of oil delivered).

15. Under date of April 28, 1975 the parties, through their respective counsel, entered into a written agreement modifying the agreement dictated into the record on February 28, 1975 (copy annexed as Exhibit O to Manning affdvt.). This modification agreement expressly provides that it reduces to writing the agreements outlined on the record in the arbitration proceeding on April 18, 1975 modifying the agreement entered by stipulation on February 28, 1975. The agreement entered by stipulation on February 28, 1975 expressly provided that all of the deliveries of oil made after March 2, 1975 would be subject to the final award of the arbitrators retroactively to midnight March 2, 1975. Thus, the original agreement made by stipulation on February 28, 1975 expressly provided (Exh. L to Manning affdvt.):-

> "During the pendency of this arbitration and subject to the final award of the arbitrators, retroactively to midnight March 2, 1975".

16. The modification agreement made under date of April 28, 1975 expressly provided that any disputes or claims arising thereunder should also be subject to arbitration. Paragraph 11 of Exhibit O to the Manning affidavit provides:

> "11. In the event that either petitioners or Asiatic fail to comply with any term or condition of this agreement the parties agree that any claim for damages or other relief by the other party may be submitted to the Panel of Arbitrators in this proceeding (which may include one or more successor arbitrators appointed pursuant to the Rules of the American Arbitration Association, should any member of the present Panel be unable to serve).

> Said Arbitrators shall have jurisdiction to hear and determine such claim and may render an award for damages, if any, together with interest and the fees and expenses of the Arbitrators and other taxable costs and disbursements relating to such proceeding."

17. Petco contended that Asiatic had overcharged it for Host Government Take (HGT). The Asiatic-Petco agreement dated April 1, 1972 provided that the base price of $2.05 per barrel should be increased penny for penny with increases in HGT. HGT is generally defined as increases or decreases in taxes, royalties, and similar items, which result from action taken by the government of the country in which the crude oil is produced from which the No. 6 fuel oil is made, in this case, Venezuela. Accordingly, on May 29, 1975, Petco served and filed a demand for arbitration with the AAA claiming that Asiatic had breached the Asiatic-Petco agreement in that it had overcharged Petco for HGT to the extent of many millions of dollars. At the request of Asiatic, extensions of time were granted to it to designate arbitrators, file counterclaims, and fix hearing dates. To date, Asiatic has not filed any counterclaims in the arbitration and has simply stricken whatever lists of arbitrators have been supplied by the AAA.

18. Under date of October 22, 1975, the arbitrators rendered their award in the arbitration brought by Petco against Asiatic in which Petco claimed among other things that Asiatic's alleged termination of the Asiatic-Petco agreement, dated April 1, 1972, was null and void and ineffective. The award (copy annexed as Exhibit Q to Manning affidavit) completely substantiated Petco's claims and reads in pertinent part as follows:-

> "A. The termination by ASIATIC PETROLEUM CORPORATION, hereinafter referred to as RESPONDENT, OF THE Agreements dated April 1, 1972 between the Parties was not effective.
>
> We therefore AWARD as follows:

"1. RESPONDENT is directed to specifically perform the Agreements between the Parties as if there were no termination.

"2. The price to be paid by NEW ENGLAND PETROLEUM CORPORATION And GRAND BAHAMA PETROLEUM COMPANY LTD., hereinafter referred to as CLAIMANTS, for the oil delivered in the calendar year 1975 pursuant to the Contracts dated on or about April 1, 1972 as amended, which are set forth as Exhibits A and B to the Stipulation of Fact, shall be the price set forth in paragraph 2(c) of the Particular Conditions of Sale under such Contracts subject to the provisions of paragraph 7 of the General Conditions of Sale."

19. Under date of January 8, 1976, the judgment of the Supreme Court, New York County, affirming the award of the arbitrators was made and entered in the office of the Clerk of New York County (copy annexed as Exhibit R to Manning affdvt.). The judgment provided among other things as follows:

"Ordered, that the unanimous award of the arbitrators dated October 22, 1975 and acknowledged on October 23, 1975 be and the same hereby is confirmed in all respects; and it is further

"Adjudged, that the termination by Asiatic Petroleum Corporation of the agreements dated April 1, 1972 between the parties was not effective; and it is further

"Adjudged, that the respondent Asiatic Petroleum Corporation is directed to specifically perform the agreements between the parties as if there were no termination; and it is further

"Adjudged, that the price to be paid by petitioners, New England Petroleum Corporation and Grand Bahama Petroleum Company, Limited, for the oil delivered in the calendar year 1975, pursuant to the contracts dated on or about April 1, 1972, as amended, shall be the price set forth in paragraph 2(c) of the Particular Conditions of Sale under such contracts subject to the provisions of paragraph 7 of the General Conditions of Sale."

20. The award of the arbitrators and the judgment of the Supreme Court, New York County thus expunged Asiatic's attempted termination of the Asiatic-Petco agreement dated April 1, 1972 and directed Asiatic to specifically perform the Asiatic-Petco agreement dated April 1, 1972 as if there had been no termination. Accordingly, all deliveries of No. 6 fuel oil by Asiatic to Petco were expressly subject to the Asiatic-Petco agreement dated April 1, 1972.

21. Notwithstanding the arbitrators' award and the judgment entered thereon, and in violation thereof, and in violation of the Asiatic-Petco agreement dated April 1, 1972, Asiatic has commenced suit against Petco in the United States District Court for the Southern District of Texas to recover what it claims is the purchase price of three deliveries of oil made in September 1975 (copy of complaint annexed as Exhibit S to Manning affdvt.). The thesis under which Asiatic attempts to sue Petco in violation of the arbitration agreement is that the September 1975 deliveries were made pursuant to the arrangement worked out in the arbitration and not pursuant to the Asiatic-Petco agreement which was reinstated by the award and judgment and which Asiatic was specifically directed to perform.

22. Inasmuch as the arrangement worked out during the arbitration was expressly made subject to the award of the arbitrators retroactive to midnight March 2, 1975, it is palpable that Asiatic is violating the award and judgment entered thereon by commencing suit against Petco in the United States District Court for the Southern District of Texas; and in any event the arrangement worked out before the arbitrators expressly provided for arbitration in paragraph 11 thereof; whether the September 1975 deliveries are subject to the arbitrators' award and the judgment thereon, and thus were made pursuant to the Asiatic-Petco agreement dated April 1, 1972, or were made pursuant to the arrangement

worked out before the arbitrators, it is palpable that Asiatic's claims with respect to the said three deliveries made in September 1975 are subject to arbitration and may not be the subject of an action in the Courts.

23. Asiatic's breaches of the Asiatic-Petco agreement dated April 1, 1972, its violations of the arbitrators' award and the judgment entered thereon, and indeed its violation of the arrangement worked out before the arbitrators, will, if this Court does not enjoin Asiatic from continuing the said litigation, and direct Asiatic to arbitrate its said claims, cause immediate and irreparable damage and harm to Petco.

24. Petco has no adequate remedy at law.

Wherefore, Petco demands judgment against Asiatic as follows:

I. Temporarily and permanently enjoining Asiatic from commencing, prosecuting, or continuing to prosecute, claims relating to the three deliveries in September 1975 in any Court proceedings,

II. Directing Asiatic to arbitrate said claims relating to the deliveries in September 1975 in the pending arbitration brought by Petco before the American Arbitration Association on May 29, 1975;

III. For the costs and disbursements of this proceeding;

IV. For such other and further relief as to the Court may seem just and proper.

Grand Bahama Petroleum Company Limited

By _____

Eaton, Van Winkle & Greenspoon
Attorneys for Petitioner

By _____

600 Third Avenue
New York, N.Y. 10016
867-0606

PETITION TO COMPEL
ARBITRATION

State of New York)
) ss:-
County of New York)

Samuel N. Greenspoon, being duly sworn, deposes and says:-

I am the attorney for Grand Bahama Petroleum Company, Limited, the petitioner above named, a corporation organized and existing under the laws of the Commonwealth of the Bahamas.

I have read the foregoing petition and know the contents thereof; that the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters I believe it to be true.

The reason why this verification is made by deponent instead of by the petitioner is that the petitioner has no officer located within the County in which I maintain my office or in the Southern District of New York.

I have personal knowledge of all matters leading up to and relating to the arbitration and events subsequent thereto as set forth in the petition; and the grounds of my belief and the sources of my information are files and records and other writings furnished to me by petitioner.

Samuel N. Greenspoon

Sworn to before me this
day of February, 1976

[illegible]
Commissioner of Deeds
[illegible]
Certificate filed in New York County
Commission Expires August 1, 1977

ORDER TO SHOW CAUSE
WHY ARBITRATION SHOULD NOT BE COMPELLED

United States District Court

Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent fromprosecuting disputes thereunder in a civil action.

76 Civ. 887 (CES)

Order to Show Cause To Proceed to Arbitration

- -x-

On the annexed petition, verified February 24, 1976 the affidavit of Richard deY. Manning, sworn to February 24, 1976, and the exhibits annexed thereto, it is

Ordered, that the respondent show cause before this Court, at a term for motions, to be held before Honorable Charles E. Stewart, Jr., one of the Judges of this Court, in Court Room No. 705, of the United States Court House, Foley Square, New York, New York at 9:30 A M. on March 4, 1976, why an order and judgment should not be made and entered herein, pursuant to 9 U.S.C. Secs. 1 et seq., directing the respondent, Asiatic Petroleum Corporation, to arbitrate the disputes or claims which it has heretofore asserted against the petitioner with respect to deliveries of No. 6 fuel oil claimed to have been made by the respondent to the petitioner in September, 1975, before the American Arbitration Association as required by the written agreement between the parties; and directing the respondent to execute and file a stipulation of discontinuance, without prejudice and without costs, of any action it has heretofore commenced to enforce its claimed right with respect to the deliveries of No. 6 fuel oil to the

CES

ORDER TO SHOW CAUSE
WHY ARBITRATION SHOULD NOT BE COMPELLED

petitioner in September, 1975; and why the petitioner should not have such other and further relief as to the Court may seem just and proper. It is further

Ordered that Sufficient cause appearing therefor, let service of a copy of this order and of the papers upon which it is made, and the petition, upon an officer of the respondent, or its attorney on or before ~~5:00~~ 2:00 P.M. on February 25, 1976, be deemed good and sufficient service and notice hereof. Said service may be made by any person over the age of 18 years and not a party to this proceeding, and need not be made by the United States Marshal.

Dated: New York, N.Y.
February 25, 1976

S/ CHARLES E. STEWART JR.
United States District Judge

AFFIDAVIT OF RICHARD deY. MANNING
IN SUPPORT OF MOTION TO COMPEL ARBITRATION

United States District Court

Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

- -x

76 Civ.

Affidavit

State of New York)
) ss:-
County of New York)

Richard deY. Manning, being duly sworn, deposes and says:

1. I am an attorney-at-law and senior partner in the law firm of Manning, Carey & Redmond, with offices at 122 East 42nd Street, New York, New York. I have been counsel to the petitioner, Grand Bahama Petroleum Company, Limited ("Petco") since its inception in 1967.

2. I have personal knowledge of each and every fact set forth in this affidavit since I was a participant in all of the transactions and events described below. This affidavit is submitted in support of the petition for an order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the respondent to arbitrate disputes or claims which it has asserted against the petitioner and to enjoin the respondent from seeking to litigate such disputes or claims in any Court proceedings. The basis

upon which the petitioner is entitled to this relief is that the contract between the petitioner and the respondent provides that any controversy or claim arising out of or relating to the agreement shall be settled by arbitration in the City of New York in accordance with the rules of the American Arbitration Association.

3. Petco is a corporation organized and existing under the laws of the Commonwealth of the Bahamas, with offices at Freeport, Bahamas. Petco is a partner or joint venturer in a refinery located at Freeport, Bahamas.

4. On information and belief (statements made by Asiatic Petroleum Corporation ("Asiatic")), Asiatic is a Delaware corporation with its principal and sole office at One Rockefeller Plaza, New York, N.Y.

5. New England Petroleum Corporation ("Nepco") is a New York corporation with offices at 825 Third Avenue, New York, New York, and owns all issued and outstanding stock of Petco, except for the qualifying shares held by the directors of Petco. Each of the directors of Petco in accordance with the law of the Bahamas holds in his name one share of the stock of Petco.

6. The amount in controversy herein, exclusive of interest and costs, exceeds the sum of $10,000. This Court accordingly has jurisdiction by reason of the diversity of citizenship of the parties and the requisite amount in controversy.

7. Prior to April 1, 1972, Asiatic and Nepco were parties to various agreements under which Asiatic agreed to sell and deliver No. 6 fuel oil to Nepco and Nepco agreed to purchase, take delivery, and pay for such No. 6 fuel oil. Disputes arose between Nepco and Asiatic concerning various aspects of such agreements, which disputes were ultimately resolved by the

execution of two contracts, one between Nepco and Asiatic and one between Petco and Asiatic. It is the Asiatic-Petco agreement which is involved herein.

8. The Asiatic-Petco agreement dated April 1, 1972 (copy annexed as Exhibit A) provided in part that Asiatic agreed to sell and deliver to Petco and Petco agreed to purchase, receive and pay for approximately 32,000 barrels per day of No. 6 fuel oil to be delivered during the period April 1, 1972 through March 31, 1978 in accordance with the terms and provisions of said Asiatic-Petco agreement.

9. The said Asiatic-Petco agreement consists of two parts. The first part is entitled "Sale of Oil Agreement" and the second part is entitled "General Conditions of Sale - F.O.B." The second part consists of Asiatic's standard conditions. These standard conditions provide in paragraph 11 thereof as follows:

> "11. ARBITRATION
>
> Except as otherwise provided herein, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in the City of New York, New York, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof."

10. The first part of the Asiatic-Petco agreement provided in paragraph 2(d)(iv) as follows:-

> "(iv) In any event price renegotiation for fuel oils to be delivered during each calendar year after 1974 shall take place during the fourth calendar quarter of the preceding year, and any renegotiated price may include provision for increases or decreases corresponding to changes in HGT during such year. The price for fuel oils to be delivered after the expiration of each one-year period will be renegotiated by the parties during the last ninety (90) days of that one year period and if the parties cannot agree on a new price for

such oils either party shall have the right to terminate the Agreement upon sixty-days written notice to the other; if neither party shall have terminated the Agreement, the Agreement will continue during the next calendar year at the price in effect prior to such renegotiation."

11. Pursuant to the above quoted paragraph 2(d)(iv) and on or about September 13, 1974, Asiatic served written notice upon Petco (copy annexed as Exhibit B) that it desired to renegotiate the price of the oil to be supplied during the calendar year 1975. Discussions took place thereafter between the parties in an effort to arrive at a new price for the year 1975. Under date of December 4, 1974, Asiatic wrote to Petco (copy annexed as Exhibit C) stating among other things that there was little if any likelihood of agreeing on a price for the fuel oil to be delivered during 1975, and that if Asiatic and Petco were unable to reach agreement on the 1975 price by December 31, 1974, then on that date Asiatic would give sixty days' notice of termination of the agreement to be effective March 2, 1975.

12. Under date of December 10, 1974 Petco wrote to Asiatic (copy annexed as Exhibit D) replying to Asiatic's letter dated December 4, 1974, and pointing out that Asiatic had not in fact negotiated in good faith for the new price and that Petco thought it was highly inappropriate for Asiatic to suggest a termination of the agreement prior to having substantiated the increases in price from the base price of the oil which Petco had paid to Asiatic over the years.

13. Under date of December 17, 1974 Asiatic wrote to Petco (copy annexed as Exhibit E) rejecting the contentions raised by Petco in its letter dated December 10, 1974, stating that Asiatic was arranging to obtain additional accountants' services as may be necessary in order to substantiate the price increases imposed by Asiatic on Petco over the years.

14. Under date of December 30, 1974 Asiatic entered into a written agreement with Nepco and Petco (copy annexed as Exhibit F) under which Asiatic agreed to defer for a period of ten days the giving of notices of termination but further provided that if the notice of termination was given to Petco on or before January 10, 1975, nonetheless any effective termination date should be March 2, 1975.

15. Under date of January 10, 1975, Asiatic delivered written notice to Petco purporting to terminate the contract between Asiatic and Petco effective March 2, 1975 (copy annexed as Exhibit G).

16. In the meantime and on December 18, 1974, Petco served and filed a demand for arbitration of a claim arising under the said agreement dated April 1, 1972 (Exhibit A). Asiatic's attorneys, by letter dated December 27, 1974 (copy annexed as Exhibit H) requested in effect a bill of particulars of Petco's claim which it ought to arbitrate. Under date of January 6, 1975, Petco's attorneys in the arbitration provided a written bill of particulars of the breaches of contract claimed by Petco in the arbitration and also referred to the contract provisions which Petco claimed had been breached (copy annexed as Exhibit I).

17. In the written bill of particulars Petco's attorneys in the arbitration stated among other things the following:

> "1. The contract provisions which each claims that Asiatic breached are numbered 2(d)(iii) and (iv).
>
> "2. The breaches are that Asiatic Petroleum did not negotiate at all, did not negotiate in good faith, sought to impose as a further condition for continuation of the contracts an unreasonable increase in price, and Nepco's and Petco's consent thereto did not act reasonably in the premises, and in general failed to comply with the requirements of reasonableness and good faith which

are inherent in every contract; and further that Asiatic Petroleum's demands were unconscionable and would impose an unconscionable price upon Nepco and Petco and upon the ultimate consumer for whom, to Asiatic Petroleum's knowledge, the product was destined; and further that Asiatic Petroleum's threats to terminate, violate the contract provisions in the light of the foregoing.

"3. So far as specific performance is concerned that remedy could take many forms, as for example:

"a) The arbitrators may fix a reasonable price;

"b) The arbitrators may require Asiatic Petroleum to negotiate in good faith within limits fixed by the arbitrators;

"c) The arbitrators may set aside any attempted termination and rule that no renegotiation is proper at this time.

"I can think of many other remedies, but I believe the foregoing examples should suffice."

18. In short, Petco's claims were to the effect that Asiatic's attempted termination of the Asiatic-Petco agreement effective as of March 2, 1975 was improper and ineffective.

19. It was obvious to Petco that it could not permit an interruption in the delivery of No. 6 fuel oil by Asiatic pending the determination of the arbitration which could take many months. Inasmuch as Asiatic had stated that the termination date was March 2, 1975, Petco sought preliminary injunctive relief in the Supreme Court, New York County, directing Asiatic to continue to deliver the No. 6 fuel oil to Petco pending the determination of the arbitration ans subject to the arbitrators' award. The Supreme Court denied such injunctive relief.

20. Accordingly, Petco requested an expedited preliminary hearing before the arbitrators so as to obtain some sort of an interim determination requiring Asiatic to continue to deliver the No. 6 fuel oil pending the determination of the arbitration and subject to the arbitrators' award.

21. At the preliminary hearing held on February 28, 1975 (pp. 27-28 of the transcript of the hearings) the attorneys for the respective parties indicated their desire to resolve the problem of the continuation of deliveries. Asiatic's attorneys pointed out that it had a problem because "that contract runs out on Sunday and we're going to have 70,000 barrels not being lifted. What are we going to do with them, put them in Lake Miricibo * * *" (Copies of pages 27 and 28 annexed hereto as Exhibit J).

22. At the suggestion of the arbitrators, it was proposed that the parties enter into an arrangement pending the award of the arbitrators and subject thereto under which Asiatic would continue deliveries of No. 6 fuel oil to Petco and Nepco. The attorneys for Petco and for Asiatic agreed, after consultation with their respective clients, to accept the suggestion of the arbitrators (pp. 45-46 of the transcript of the minutes,(copy annexed as Exhibit K).

23. Accordingly, the attorneys for the respective parties dictated into the record the arrangement pursuant to which Asiatic would continue to deliver No. 6 fuel oil to Petco pending the award of the arbitrators and subject to such final award (pp. 48-54 of the transcript of the minutes (copy annexed as Exhibit L).

24. Subsequent to dictating the stipulation into the minutes, and on April 11, 1975, Asiatic's attorneys wrote to Petco's attorneys (copy annexed as Exhibit M) complaining about alleged violations of Petco and Nepco to nominate vessels in order to lift the No. 6 fuel oil. In addition, a draft of a proposed escrow agreement was also enclosed. Under date of April 15, 1975 Petco's counsel wrote to Asiatic's counsel (copy annexed as Exhibit N) replying to the letter dated April 11, 1975. Among other things Petco's counsel pointed out that Asiatic insisted upon conditions not contained in the stipulation before it would authorize any liftings at all. In that letter Petco's counsel pointed out that he would have to discuss various matters with me in order to approve the escrow agreement and a proposed written agreement incorporating the matters dictated into the record before the arbitrators.

25. As a result of those letters a second "emergency" meeting was held with the arbitrators on April 18, 1975. It appeared that Asiatic's counsel was claiming that Petco and Nepco had violated the terms of the agreement dictated into the record on February 28, 1975 but in reality Asiatic's counsel was really seeking some amendments thereto. As a result of that meeting various changes were made to the agreement dictated into the record on February 28, 1975 and the parties agreed at that time on the terms of what should be contained in the written escrow agreement pursuant to which Petco should deposit a specified sum in escrow for each barrel of oil delivered by Asiatic to Petco.

26. Under date of April 28, 1975 the attorneys for the respective parties, pursuant to the authority granted to them by their clients, entered into a written agreement modifying the agreement entered into by stipulation on February 28, 1975.

(Copy annexed as Exhibit O). On the same date the parties and their attorneys executed the escrow agreement dated April 23, 1975 (Copy annexed as Exhibit P).

27. The modification agreement of course continued the agreement made by stipulation on February 28, 1975, except to the extent changed thereby. Thus the entire agreement providing for deliveries of No. 6 fuel oil to Petco and Nepco during the pendency of the arbitration was made expressly subject to the following (pp. 48-49 of the transcript of the minutes, Exhibit L):

> "During the pendency of this arbitration and subject to the final award of the arbitrators, retroactively to midnight March 2, 1975".

28. In addition, the modifidation agreement expressly provides in paragraph 11 thereof:

> "11. In the event that either petitioners or Asiatic fail to comply with any term or condition of this agreement the parties agree that any claim for damages or other relief by the other party may be submitted to the Panel of Arbitrators in this proceeding (which may include one or more successor arbitrators appointed pursuant to the Rules of the American Arbitration Association, should any member of the present Panel be unable to serve). Said Arbitrators shall have jurisdiction to hear and determine such claim and may render an award for damages, if any, together with interest and the fees and expenses of the Arbitrators and other taxable costs and disbursements relating to such proceeding."

29. From and after the making of the agreement for Asiatic to deliver No. 6 fuel oil to Petco and Nepco and subject of course to the arbitrators' award retroactively to March 2, 1975, Asiatic delivered or caused to be delivered No. 6 fuel oil to Petco and Nepco. Asiatic claims it made three deliveries to Petco on September 13, September 14, and September 17, 1975; and Asiatic claims that Petco has not paid for those three deliveries.

Petco takes the position that Asiatic owes to it sums substantially in excess of the purchase price of those three deliveries of No. 6 fuel oil. Petco contends that Asiatic violated the contract between the parties by overcharging Petco for Host Government Take (HGT). In brief, HGT is supposed to include all changes, whether up or down, which affect the price of the oil and which are the result of action taken by the government where the crude oil is produced from which the No. 6 fuel oil was made, in this case, Venezuela.

30. Accordingly, under date of May 29, 1975, Petco served and filed a demand for arbitration claiming that Asiatic had breached the contract in that it had overcharged Petco for millions of dollars of HGT. At the request of Asiatic, extensions of time were granted to it to designate arbitrators, file counterclaims, and fix hearing dates. To date, Asiatic has not filed any counterclaims in the arbitration and has simply stricken whatever lists of arbitrators which the American Arbitration Association has supplied.

31. Under date of October 22, 1975, the arbitrators rendered their award in the arbitration brought by Petco and Nepco against Asiatic claiming, among other things that Asiatic's alleged termination of the Asiatic-Petco contract was null and void and ineffective. The arbitrators award was a complete victory for Petco and Nepco. The award (copy annexed as Exhibit Q) reads in pertinent part as follows:-

> "A. The termination by ASIATIC PETROLEUM CORPORATION, hereinafter referred to as RESPONDENT, OF THE Agreements dated April 1, 1972 between the Parties was not effective.

We therefore AWARD as follows:

"1. RESPONDENT is directed to specifically perform the Agreements between the Parties as if there were no termination.

"2. The price to be paid by NEW ENGLAND PETROLEUM CORPORATION And GRAND BAHAMA PETROLEUM COMPANY LTD., hereinafter referred to as CLAIMANTS, for the oil delivered in the calendar year 1975 pursuant to the Contracts dated on or about April 1, 1972 as amended, which are set forth as Exhibits A and B to the Stipulation of Fact, shall be the price set forth in paragraph 2(c) of the Particular Conditions of Sale under such Contracts subject to the provisions of paragraph 7 of the General Conditions of Sale."

32. Under date of January 8, 1976, the judgment of the Supreme Court, New York County, confirming the award was made and entered in the office of the Clerk of New York County (Copy annexed as Exhibit R). The Judgment provided among other things as follows:-

"Ordered, that the unanimous award of the arbitrators dated October 22, 1975 and acknowledged on October 23, 1975 be and the same hereby is confirmed in all respects; and it is further

"Adjudged, that the termination by Asiatic Petroleum Corporation of the agreements dated April 1, 1972 between the parties was not effective; and it is further

"Adjudged, that the respondent Asiatic Petroleum Corporation is directed to specifically perform the agreements between the parties as if there were no termination; and it is further

"Adjudged that the price to be paid by petitioners, New England Petroleum Corporation and Grand Bahama Petroleum Company Limited, for the oil delivered in the calendar year 1975, pursuant to the contracts dated on or about April 1,1972, as amended, shall be the price set forth in paragraph 2(c) of the Particular Conditions of Sale under such contracts subject to the provisions of paragraph 7 of the General Conditions of Sale."

33. Accordingly, it is perfectly clear and cannot be disputed that the interim arrangement, under which Asiatic delivered No. 6 fuel oil to Petco, subject to the award of the arbitrators, was swept aside by the arbitrators award and the judgment ent ered thereon and the agreement dated April 1, 1972 was reinstated by the arbitrators for the year 1974 in full force and effect. The award of the arbitrators and the judgment expressly provided that the attempted termination by Asiatic of the Asiatic-Petco agreement dated April 1, 1972 was not effective; and the award of the arbitrators and the judgment further expressly provided that Asiatic was "directed to specifically perform the agreements between the parties as if there were no termination."

34. Accordingly, all of the No. 6 fuel oil sold and delivered by Asiatic to Petco during the year 1975, including the three deliveries in September 1975, were made pursuant to the original Asiatic-Petco agreement dated April 1, 1972. Asiatic has now flouted the arbitrators' award and the judgment. Instead of complying with the Asiatic-Petco agreement dated April 1, 1972, which mandates arbitration of all disputes, Asiatic has sued Petco in the United States District Court for the Southern District of Texas to recover what it claims is the purchase price of three deliveries of oil made in September 1975 (copy of complaint annexed as Exhibit S). The thesis under which Asiatic attempts to sue Petco in violation of the arbitration agreement is that the September 1975 deliveries were made pursuant to the arrangement made in the arbitration. Thus, Asiatic alleges, (par 3 of Exhibit S):-

> "Thereafter [after May 29, 1975) and pursuant to the Contract to Purchase Oil and not pursuant to Contract 72/530 [Exh. A], APC [Asiatic] made deliveries of oil to Petco etc."

35. This attempt to avoid the arbitration provisions of Exhibit A is a pure sham. To be noted is the fact that all that Asiatic annexes to its complaint is the modification agreement made April 28, 1975 (Exh. O), which shows on its face that it is not the complete agreement. This is made evident by the fact that what Asiatic calls the Contract to Purchase Oil expressly provides in the introduction thereto that it is "modifying the agreement entered by stipulation on February 28, 1975". The agreement entered by stipulation on February 28, 1975 expressly provides that (Exhs. K and L):-

> "During the pendency of this arbitration and subject to the final award of the arbitrators, retroactive to midnight March 2, 1975".

36. Hence it is crystal clear, without any question, that every one of the deliveries made in 1975 was made pursuant to the Asiatic-Petco agreement dated April 1, 1972 since the award and judgment expressly provides that Asiatic's attempt at termination was not effective and that Asiatic was directed to specifically perform the Asiatic-Petco agreement dated April 1, 1972.

37. In any event, what Asiatic refers to as a so-called contract to purchase oil also contains an arbitration provision which states in plain language:-

> "In the event that either petitioners [Petco or Nepco] or Asiatic failed to comply with any term or condition of this agreement the parties agree that any claim for damages or other relief by the other party may be submitted to the panel of arbitrators in this proceeding (which may include one or more successor arbitrators appointed pursuant to the rules of the American Arbitration Association, should any member of the present panel be unable to serve). Said Arbitrators shall have jurisdiction to hear and determine such claim and may render an award for damages, if any, together with interest and the fees and expenses of the Arbitrators and other taxable costs and disbursements relating to such proceeding."

38. Accordingly, it makes no difference whether Asiatic is bound as the arbitrators' award and the judgment provided, to specifically perform the Asiatic-Petco contract dated April 1, 1972 and delivered the oil in question thereunder or whether the oil was delivered under what Asiatic euphemistically refers to as the contract to purchase oil. In either event the claim for payment of the three deliveries of oil made in September 1975 is subject to a written agreement for arbitration ans Petco is aggrieved by the failure of Asiatic to submit its claims to arbitration and by Asiatic's attempt to breach its solemn covenants to arbitrate any and all disputes arising out of or relating to the agreement between the parties.

39. While the subject is not necessary relevant, the Court may wonder why Asiatic, a Delaware corporation, with its sole offices in New York, should sue Petco in Texas. Asiatic has no connection with Texas at all. In attempting to show jurisdiction in the Texas Courts and an appropriate venue, Asiatic is compelled to fabricate a false statement of facts. Thus, in order to utilize the Texas long arm statute Asiatic falsely alleges that Petco is transacting business and is engaging in business in Texas; and Asiatic even goes so far as to say that Petco has conducted substantial business in the State of Texas and in the Southern District of Texas. (Pars. 2 and 4 of Exh. S).

40. In fact, Petco engaged in a single transaction which might be thought to have some relationship to Texas. At one time in 1972 and early 1973 Petco had a slight surplus of crude oil which it was committed to purchase. Petco sold some crude oil to a company called Texas City Refining, c.i.f. Texas. Perhaps as to Texas City Refining, it could enforce that contract in Texas. But that was the sole transaction which Petco ever engaged in which had any relationship to Texas and I have been counsel for that company since its inception in 1967.

41. That transaction with Texas City Refining was terminated in November 1973 and since that date Petco has not delivered a single barrel of oil to anyone in Texas nor has it engaged in any transaction having any relationship whatsoever to the State of Texas.

42. Although as I stated earlier, the question of why Asiatic would sue Petco in Texas is not merely material on this application, nonetheless I thought it only proper to bring these facts to the Court's attention in view of the false statements contained in Asiatic's complaint.

43. I respectfully submit that Asiatic should be compelled to comply with the Asiatic-Petco contract; that it should be directed to arbitrate any claims which it may have against Petco in the manner directed for such agreement, to wit, before the American Arbitration Association in New York, N.Y.; and that Asiatic should be enjoined from prosecuting or continuing to prosecute the action which it apparently has brought against Petco in the United States District Court for the Southern District of Texas. I state "apparently brought" because we have been informed that the complaint was filed in the Southern District of Texas on February 13, 1976; that the proposed method of service of process was to serve the Secretary of State of Texas who would then presumably mail the summons and complaint to Petco in Freeport , Bahamas. As yet, Petco has not received the summons or complaint.

44. I respectfully request this Court to enter a temporary restraining order, pending the hearing of this petition, enjoining Asiatic from prosecuting or from continuing to prosecute its alleged action against Petco in the Southern District of Texas.

AFFIDAVIT OF RICHARD deY. MANNING
IN SUPPORT OF MOTION TO COMPEL ARBITRATION

It is indisputable that there is a "written agreement for arbitration"; and it is also indisputable, that Asiatic's claims as asserted in the complaint arise under a written agreement containing an arbitration clause and that its claims are arbitrable and not justiciable by the Courts. Asiatic has been ordered by the arbitrators and by the Supreme Court of the State of New York to specifically perform the Asiatic-Petco agreement dated April 1, 1972 (Exh. A), and its suit in Texas is a plain breach and violation of the arbitrators' award, the judgment entered thereon, and the agreement between the parties.

45. A temporary restraining order is necessary so that Petco will not be required to litigate the same disputes in two different forums at substantial expense to Petco and to the time and effort of the United States Courts; and also to prevent duplication of litigation. On the other hand, Asiatic cannot possibly be damaged in any respect by the granting of such temporary restraining order pending the hearing and determination of the petition.

46. No previous application for the relief requested herein has been made to this Court or any Judge thereof.

Richard deY. Manning

Sworn to before me this
24th day of February, 1976
S/ FJW
FREDERICK J. WILSON
NOTARY PUBLIC, State of New York
No. 31-4295705
Qualified in New York County
Commission Expires March ... 1977

PETITION TO COMPEL ARBITRATION
ANNEXED TO AFFIDAVIT OF
RICHARD deY. MANNING

See Page 3a

EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

SALE OF OIL AGREEMENT

AGREEMENT made as of the 1st day of April, 1972, between ASIATIC PETROLEUM CORPORATION of One Rockefeller Plaza, New York, New York 10020 (hereinafter called "Sellers") and GRAND BAHAMA PETROLEUM COMPANY LTD., P. O. Box F2521, Mercantile Bank Building, Freeport, Bahamas (hereinafter called "Buyers"). Sellers and Buyers hereby agree as follows:

1. GENERAL CONDITIONS OF SALE

The General Conditions of Sale attached hereto shall form part of this agreement and references to this Agreement shall be taken to include references to the General Conditions of Sale so attached. In case of inconsistency or conflict between the Particular Conditions of Sale and the General Conditions of Sale attached hereto, the Particular Conditions of Sale shall prevail.

2. PARTICULAR CONDITIONS OF SALE

Sellers hereby sells and agrees to deliver (or cause to be delivered) to Buyers, and Buyers hereby purchases and agrees to receive and pay for Oil in accordance with the provisions set out below and in the General Conditions of Sale.

(a) Quantity

(i) Thirty-Two thousand (32,000) barrels per day, plus or minus 10% Buyers option No. 6 (2.8% S -Reg. 300 Vis.) Fuel Oil to be delivered during the period April 1, 1972 through March 31, 1978. Of this total of Thirty Two Thousand (32,000) barrels per day, Buyers have the option to request maximum Twenty Thousand (20,000) barrels per day Fuel Oil having a maximum explosivity of 50% B.V. (FS 1151).

AMERICAN ARBITRATION ASSOCIATION
CASE No. _____
No. R
EXHIBIT

(ii) In the event that in any calendar quarter Buyers fail to purchase at least 90% of the quantity requested by them prior to the commencement of that quarter for delivery during that quarter (which requested amount shall not be less than 90% nor more than 110% of 2,925,000 barrels) and Buyers cannot furnish satisfactory evidence that such failure was due to circumstances beyond their reasonable control, then Sellers shall have the right to terminate this Agreement on not less than ninety (90) days written notice to Buyers.

(iii) Sellers shall have the right to terminate this Agreement upon giving not less than sixty (60) days notice of termination if at the end of any twelve-month period ending March 31 Buyers shall not have purchased a minimum of 10,500,000 barrels during that period less the amount as to which Buyers have furnished satisfactory evidence that such failure was due to circumstances beyond their reasonable control.

(b) Quality/Specifications

The Oil shall comply with the following specifications:

Gravity, °A.P.I. at 60°F. (ASTM D 1298)	Minimum 10
Viscosity, Saybolt Furol at 122°F. (ASTM D 88)	Minimum 100 Maximum 300
Sulphur, % B.W. (ASTM D 1551)	Maximum 2.8
Pour Point, °F. (ASTM D 97)	Maximum 50
Flash Point °F. (ASTM D 93)	Minimum 150
Water, % B.V. (ASTM D 95)	Maximum 1.0
Sediment, % B.W. (ASTM D 473)	Maximum 0.25

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(c) Price

The price to be paid by Buyers to Sellers for the quantity of Oil certified as delivered F.O.B. Caribbean loading port in accordance with Clause 6(a) of the General Conditions of Sale during the term of the contract shall be $2.05 per barrel subject to increase or decrease as specified in paragraph (d) below.

(d) Price Variation/Renegotiation

(i) Buyers shall pay Sellers an amount per barrel which shall not be less than 50% of the amount of the first Venezuelan Host Government Take increase (as defined in Clause 7(A) of General Conditions of Sale) other than the quarterly freight adjustment ("HGT Increase") applicable to the grades of oil delivered after December 31, 1972 (which shall include any HGT increase effective after April 1, 1972) it being understood and agreed that Buyers will also endeavor to pay the balance in excess of 50% to Sellers. If Buyers shall pay Sellers less than 100% of the first HGT increase, the price for the fuel oil to be delivered during the twelve-month period commencing July 1, 1973 will be renegotiated by the parties during the period April 1/June 30, 1973. If the parties cannot agree on a new price to be paid for oil to be delivered on and after July 1, 1973, Sellers shall have the option to terminate this Agreement as of June 30, 1973 upon written notice to Buyers, or to continue it at the price in effect prior to such renegotiation under the conditions set forth in sub-paragraph (d) (ii).

(ii) If Buyers agree to pay 100% of the first HGT increase then, except as specified herein, there shall be no renegotiation of the price payable by Buyers until the period October 1/ December 31, 1974 when the parties shall renegotiate the price for the oil to be supplied during the calendar year commencing January 1, 1975. If buyers shall not have agreed to pay Sellers 100% of all HGT increases after the first HGT increase the price for the oil to be delivered after the date any such subsequent HGT increase is initially imposed shall be renegotiated during the thirty (30) day period immediately after Sellers give notice to Buyers of such subsequent HGT increase. In the event the parties cannot agree on a renegotiated price during the thirty-day period Sellers will have the right to terminate the contract sixty (60) days after the expiration of such thirty-day period or to continue it at the price in effect prior to such renegotiation under the conditions provided for herein.

(iii) If during any period after December 31, 1972 Buyers are paying 100% of first HGT increase and all subsequent HGT increases, the effective price will be reduced to the extent of any decrease in HGT, provided that Sellers will not be obligated to reduce such price by an amount exceeding the aggregate of all increases in HGT after December 31, 1972; in the event Sellers do not reduce the price by an amount equal to 100% of any such decrease the price for oil to be delivered after the effective date of such HGT decrease shall be renegotiated during the thirty (30) day period immediately after the date of such HGT decrease. In the event the parties cannot agree on a renegotiated price during that thirty-day period Buyers will have the right to terminate the contract sixty (60)days after the expiration of such thirty-day period or to continue the contract at the price in effect prior to such renegotiation under the conditions set forth in paragraph (d) (ii).

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EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

(iv) In any event price renegotiation for fuel oils to be delivered during each calendar year after 1974 shall take place during the fourth calendar quarter of the preceding year, and any renegotiated price may include provision for increases or decreases corresponding to changes in HGT during such year. The price for fuel oils to be delivered after the expiration of each one-year period will be renegotiated by the parties during the last ninety (90) days of that one year period and if the parties cannot agree on a new price for such oils either party shall have the right to terminate the Agreement upon sixty-days written notice to the other; if neither party shall have terminated the Agreement, the Agreement will continue during the next calendar year at the price in effect prior to such renegotiation.

(v) In the event there is a difference between the quarterly freight adjustment in effect during the second calendar quarter of 1972 and the first calendar quarter of 1973 and such difference represents

(a) an increase, then the net tax effect of such increase will be added to the price of $2.05 per barrel;

(b) a decrease, then the net tax effect of such decrease will be deducted from the first HGT increase referred to in sub-paragraph (d) (i) and will be considered to apply in reduction of that part of such HGT increase as to which Buyer shall not be obligated to pay to Sellers.

Automatic HGT increases or decreases in the freight adjustment for the second quarter of 1973 and thereafter will apply without regard to the other provisions hereof. In no case during the life of the Agreement will the price payable by Buyers be less than $2.05 per barrel.

In the event of a basic change in the provisions of the automatic freight adjustment, the provision of this sub-paragraph (d) (v) will be amended so as to give effect to the intent expressed herein.

For the purpose of this Agreement the term HGT will include Government participation to the extent it represents an ascertainable out-of-pocket cost to Sellers or their suppliers.

(e) Method of Delivery-

Unless otherwise agreed between the Parties hereto, Buyers shall take delivery into Buyers' tanker or tankers in accordance with Clause 2 (a) (ii).

(f) Loading Port

Any port in Netherlands Antilles, Venezuela or Trinidad, as designated by Sellers.

(g) Time allowed for loading

The total port time allowance for loading a full cargo shall be 36 running hours (prorated for a part cargo) plus 12 running hours per port call.

(h) Maximum measurements of vessels at loading port

(i)	Overall length	700 feet
(ii)	Draft	38 feet

EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

(i) To the extent that sales and deliveries under this Agreement are to be made at loading ports in Netherlands Antilles or Venezuela or Trinidad, such sales and deliveries shall be made under the terms and conditions hereof, directly to Buyers by Sellers' associated companies, Shell Curacao N.V., or Compania Shell de Venezuela Limited, or Shell Trinidad Limited, who as to such sales and deliveries shall have all the rights, and be subject to all the obligations of Sellers under this Agreement.

(j) Applicable Law and Notices

This agreement shall be deemed to have been made in New York, New York and shall be construed and shall take effect in accordance with the law of the State of New York.

Except as otherwise provided herein, all notices and other communications to be given hereunder by one party to the other shall be in writing and sent by mail postage prepaid or by telegraph as follows: By Sellers to Buyers at the office of Buyers at P.O. Box F2521, Mercantile Bank Building, Freeport, Bahamas. By Buyers to Sellers at the office of Sellers at One Rockefeller Plaza, New York, New York 10020. All such notices sent by mail shall be deemed to have been received when a letter in the ordinary course of post would have been received.

("SELLERS")

ASIATIC PETROLEUM CORPORATION

By: M. J. Paulli

M. J. Paulli, Vice-President

("BUYERS")

GRAND BAHAMA PETROLEUM COMPANY LTD.

By: T. C. Covert

T. C. Covert, Managing Director

EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

GENERAL CONDITIONS OF SALE - F.O.B.

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, "Oil" shall mean the oil products purchased and sold hereunder; "barrel" shall mean a quantity of Oil which when measured at 60°F equals 42 U.S. gallons.

2. LIFTING UNDERTAKINGS

If Buyers during any year or part of a year for which an undertaking to take delivery has been agreed herein takes delivery of a quantity of oil less than the quantity constituting Buyers' undertaking to take delivery for that year or part of a year, Sellers shall without prejudice to the remedies available to Sellers under this Agreement, not be obliged to supply the shortfall during any subsequent year or part of a year but shall have the right to subtract in any subsequent year or part of a year from the quantity it has undertaken to deliver in that period a quantity of oil equal to such shortfall; PROVIDED that any delivery of oil made within ten (10) days subsequent to any year or part of a year by a vessel nominated by Buyers and accepted by Sellers in accordance with subclause 5(A) hereof with an estimated date of arrival within that year or part of a year, shall be deemed to have been made in that period.

3. DELIVERY, PROPERTY AND RISK

(A) Sellers shall deliver the oil to Buyers at loading port free on board vessel nominated or caused to be nominated by Buyers in accordance with the provisions of subclause 5(A).

(B) Title to and risk in the oil shall pass from Sellers to Buyers as it passes the vessel's permanent hose connection at loading port.

4. PAYMENT

(A) Payment for each delivery of Oil shall be made to Sellers in New York, New York in net cash without discount or allowance upon presentation to Buyers of Sellers' invoice based upon the quantity and quality of Oil certified by Sellers or by the independent inspector, as the case may be, as having been delivered.

(B) In the event that Sellers should at any time extend credit to Buyers by granting time to pay invoices hereunder, such time shall commence with the day on which the delivery of the Oil to Buyers is completed. Any such extension of credit to Buyers shall be granted in writing and shall be revocable by Sellers at any time upon giving written notice of revocation to Buyers.

5. NOMINATION, LAYTIME AND DEMURRAGE

(A) Buyers shall notify Sellers, by the 5th day of each month, with a written schedule of their requirements for the following three calendar months, showing for the first month, the five (5) day ranges for each requirement to be nominated and the requirements in total for each of the two (2) months thereafter. Buyers shall advise Sellers the name of the vessel as soon as practicable but if possible not less than fifteen (15) days prior to the estimated date of arrival of each vessel at loading terminal. If Sellers do not within two (2) days of receipt of any such vessel nomination reject the nomination in question Sellers shall be deemed to have accepted it. A nomination shall not be rejected unreasonably. Where a nomination is rejected, Buyers shall make an alternative nomination to Sellers. Buyers shall not without Sellers' consent nominate any vessel with dimensions in excess of those stipulated elsewhere in this Agreement. Sellers shall not less than ten (10) days prior to the estimated date of arrival of the vessel in question notify Buyers of the loading port at which the cargo to be lifted shall be held in readiness.

EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

(B) Buyers shall arrange for vessel to report to Sellers at loading port not less than forty-eight (48) hours in advance of arrival, stating the expected date and hour of arrivals at loading berth. Upon arrival off loading berth and clearance by custom authorities and after obtaining any other Governmental approval required prior to loading, the master of the vessel or the agents shall give Sellers notice in writing that the vessel is ready to load cargo, berth or no berth.

(C) The time allowed for loading shall cover all time in port which shall run from the end of each sea passage until the commencement of each sea passage. Such time in port shall be deemed to commence from the time of arrival at the normal Pilot embarkation point inward bound until the normal Pilot disembarkation point outward bound or in the event that no Pilot is required on passing the outer light/channel buoys, except that where the vessel arrives at the normal Pilot embarkation point inward bound at a time which is earlier than 00.01 hours on the estimated date of arrival at berth given by Buyers under subclause 5(A), the hours between the actual time of arrival and the time of arrival at the Pilot embarkation point as calculated in the manner specified above shall not count against time allowed for loading. If the vessel arrived at the normal Pilot embarkation point inward bound at a time which is later than 23.59 hours on the estimated date of arrival at berth given by Buyers under subclause 5(A), the hours between the time notice of readiness is given by Buyers under subclause 5(B) and the acceptance of the vessel by Seller shall not count against time allowed for loading.

(D) If the time allowed for loading is exceeded (whether or not such excess is due to any cause within Clause 8 hereof) Sellers shall pay Buyers demurrage for all such excess time at the rate determined by applying the London Tanker Brokers Panel Average Freight Rate Assessment appropriate to the size of the vessel concerned and applicable to the date of commencement of loading of the vessel to the demurrage rate applicable to the size of the vessel provided for in Worldscale as amended from time to time or such other Freight Scale as may be issued in replacement thereof, provided that:

(i) if the time allowed for loading any cargo is exceeded as a result of breakdown of machinery (not occasioned by want of due diligence) or fire or explosion in or about the loading facilities or arises or results from Act of God, act of war, strike, boycott, lock out, riot, civil commotion and arrest or restraint of princes, rulers or people, the rate of demurrage payable shall be one half of the said rate;

(ii) Sellers shall not be liable to pay any demurrage incurred through fault or failure of the vessel or if loading is suspended for the vessel's purposes; and delays due to Buyers or vessels reasons.

(iii) Where Buyers have voyage chartered the vessel in question, Sellers liability for demurrage shall not exceed that which Buyers are liable to pay under the terms of the voyage charter.

(E) Sellers shall not be obliged to load any vessel for which a nomination has been made by Buyers and accepted by Sellers and in respect of which Sellers have not, at the expiration of the tenth day after the expected date of arrival notified under subclause 5(A), received a notice of readiness to load to which subclause 5(B) refers. Any such vessel shall be deemed to have been withdrawn by Buyers and Buyers shall reimburse to Sellers any expense incurred by Sellers as a result of such deemed withdrawal.

6. VERIFICATION AND MEASUREMENT

(A) The quality and quantity of each delivery of Oil hereunder shall be determined by verification (sampling and testing) and measurement conducted by Sellers at loading port: PROVIDED that Buyers shall be entitled to appoint an independent inspector and if Buyers so appoint then such verification and measurement shall be conducted by Sellers under the supervision of such independent inspector. A certificate shall be issued by Sellers (or, if an independent inspector has been appointed by Buyers, by such independent inspector) setting forth, in respect of each delivery the specification and quantity of oil delivered. The data contained in such certificate shall be binding and conclusive upon both Sellers and Buyers. The costs of the services of any independent inspector appointed by Buyers hereunder shall be shared equally between the parties hereto.

(B) Any verification and measurement under subclause 6 (A) shall be conducted in accordance with the methods at the time approved and accepted by the American Society for Testing and Materials, or if none are so approved and accepted, those of the American Petroleum Institute.

(C) Any claim with regard to the quality and/or quantity of the Oil delivered hereunder, as determined pursuant to subclause (A) above, must be made by written notice to Sellers not later than thirty (30) days after the date on which delivery of the Oil to Buyers is completed; otherwise any such claim shall be deemed to have been waived.

(D) Subject to subclause 6 (C) above, if any controversy shall arise with respect to the quality and/or quantity of Oil delivered, such controversy shall be settled by an arbitrator appointed by Sellers and Buyers, and such appointment shall be made within thirty (30) days after written demand therefor has been sent by one party to the other. If the parties are unable to agree upon an arbitrator within the above period, the controversy shall be settled pursuant to the provisions of Clause 11 hereof.

7. PRICE ADJUSTMENTS

(A) If at any time any governmental authority should, charge any new or additional or increase any existing tax, charge, impost, duty or levy (including, but not limited to royalty payments) on or in respect of the Oil sold hereunder or on or in respect of the crude oil from which such Oil is derived or the production, manufacture, storage, transportation, shipment, export or import of either thereof, or change the level or method of calculation of any tax, charge, impost, duty or levy now in force, or charge Sellers or Sellers' suppliers with any new or additional or an increase in any existing tax on or in respect of the proceeds of the sale of such Oil or the income therefrom, or change the level or method calculation of any such tax now in force, in such manner or such amount as would reduce the net income after taxes received by Sellers or Sellers' suppliers from the sale of such Oil, then Sellers may increase the price of the Oil to be sold hereunder by an amount per barrel which will offset fully the increased economic burden on Sellers or Sellers' suppliers applicable to the Oil to be sold hereunder. Sellers shall give Buyers notice of the increase in such price, which notice shall be given as soon as practicable, and such increase in price shall take effect with respect to the Oil remaining undelivered hereunder. Upon receipt of such notice Buyers may, by ten days notice to Sellers, elect to terminate this Agreement as to the Oil remaining undelivered hereunder at the end of such ten-day period, whereupon, unless Sellers agree to waive the increase in price with respect to the Oil so remaining undelivered hereunder, this Agreement shall terminate as to such Oil. Any

such termination shall not affect the obligation of Buyers to pay to Sellers any and all amounts due and unpaid for the Oil delivered hereunder prior to the end of such ten-day period. If requested by Buyers, Sellers will furnish to Buyers evidence of the applicability of the price increase on the Oil to be sold hereunder to such increased economic burden and for this purpose a certificate by independent public accountants for Sellers shall constitute sufficient evidence thereof.

(B) For the purpose of calculating any price increase Sellers will take into account at its option either (1) the amount of the increment directly applicable to the Oil sold hereunder or the crude oil from which such Oil is derived in the case of any tax, charge or levy imposed on or in respect of such Oil or crude oil or (2) the amount of the tax, charge, impost or levy which on average could be attributable to each barrel of Oil or crude oil sold to all their customers by Sellers or Sellers' suppliers.

(C) If, for any reason (other than those referred to in (A) above) beyond the control of Sellers or Sellers' suppliers, it or they can only continue to meet its or their obligations under this Agreement, whether wholly or in part, at substantially increased cost, or at prices substantially below those which would be obtained for similar types/quantities of Oil from other Buyers generally, Sellers at any time may request in writing an immediate renegotiation of the price payable under this Agreement. If no Agreement shall be reached within a period of 60 days from the date of such request, this Agreement shall terminate as to the Oil remaining undelivered hereunder with effect as from the end of said 60 day period.

8. EXCEPTIONS

(A) Sellers shall not be liable for failure to perform any or all of the provisions of this contract, in the event that performance becones commercially impracticable by reason of any cause beyond the control of Sellers or Sellers' suppliers. Buyers and Sellers agree that the expression "causes beyond the control of Sellers or Sellers' suppliers" shall be deemed to include, for example, acts, orders or requests of any government or local authority, without regard to legal validity; labor difficulties or work stoppages or slowdowns of any kind; the failure or curtailment of Sellers' source of supply as specified in this Agreement (otherwise the sources of supply customarily utilized by Sellers in furnishing Oil to Buyers and other purchasers of Oil from Sellers with discharge points situated within the same general geographic region as that of Buyers); navigational and transportation difficulties, even if occasioned by negligence or fault of the Sellers' servants or agents; and any substantial casualty to the production, refining or transportation facilities of Sellers or Sellers' usual sources of supply: provided that, it is expressly understood that the enumeration of particular causes in this clause are for purposes of illustration only, and are not deemed to exclude excuse of Sellers by reason of any other cause beyond the reasonable control of Sellers or Sellers' suppliers. Buyers and Sellers further agree that the expression "commercially impracticable" as used herein shall also comprehend any occurence, subsequent to the date of this contract, of any events or causes beyond the reasonable control of Sellers or Sellers' suppliers which would substantially change the cost to Sellers or Sellers' suppliers of performing this contract so as to make such performance onerous or unprofitable.

EXHIBIT A TO AFFIDAVIT OF RICHARD deY. MANNING

(B) If by reason of any of the causes described in subclause 8 (A) or by reason of the refusal or failure of any government to grant any production permits or by reason of any election of a government to take its royalties in kind, whether occurring at a source of supply named in this Agreement or not, there shall occur a shortage of Oil resulting in a decrease in the quantity or quantities of Oil available to Sellers or Sellers' suppliers (such decrease not being wilfully caused by Sellers or Sellers' suppliers) so that Sellers shall be unable fully to comply with its obligations to Buyers and others to whom Sellers shall be bound under its then existing contracts, Sellers shall be at liberty to withhold, suspend or reduce deliveries under this Agreement to such extent as it in its judgment may see fit and shall not be required to purchase supplies to make good any shortages resulting therefrom, although Sellers will endeavor to arrange an equitable distribution of Oil in the event heretofore referred to, Buyers shall be free to purchase from other suppliers any deficiencies hereunder caused by the operation of this subclause 8 (B).

(C) Anything herein to the contrary notwithstanding, Sellers shall not be required to allocate available quantities among Buyers and the other purchasers from Sellers. Nevertheless, if for any reason Sellers shall so allocate such quantities, it shall give notice in writing to Buyer of the amount of Oil which Sellers propose to allocate to Buyers. If Buyers do not accept the allocation made to them within 30 days from the date of such request, this Agreement shall terminate as to the Oil remaining undelivered hereunder with effect as from the end of said 30-day period.

9. ADDITIONAL CONDITIONS

(A) If either party shall be adjudicated a bankrupt or an order shall be made approving a petition seeking its reorganization or readjustment or a trustee in bankruptcy or a liquidator, sequestrator or receiver shall be appointed of all or a substantial part of its assets or either party shall become bankrupt or insolvent or shall commence proceedings for dissolution or liquidation or shall file a petition in voluntary bankruptcy or shall make an assignment for the benefit of creditors or consent to the appointment of a liquidator, sequestrator or receiver of all or any part of its property or shall file a petition seeking reorganization or readjustment or shall file a petition to take advantage of any debtors' or insolvency act, the other party may by written notice forthwith terminate this Agreement but such termination shall be without prejudice to any right of action or claim accrued at the date of termination.

(B) Subject to Clause 8 hereof, failure of Sellers to deliver, or of Buyers to take delivery or receive or pay for, the Oil in accordance with the provisions of this Agreement shall entitle Buyers or Sellers, as the case may be, without prejudice to any other rights and remedies available to them, either to treat such failure as a repudiation of this Agreement by the other and to terminate this Agreement or to suspend its performance so long as any such failure shall exist and recover damages for breach of this Agreement. Unless waived in writing by Sellers, any failure of Buyers to carry out or observe any terms or provisions of any other Agreement between Buyers and Sellers or Buyers and any associated company of Sellers for the sale to Buyers of crude oil or petroleum products, which failure shall not have been cured or waived within any period provided therefor under such other Agreement, shall constitute a default by Buyers under this Agreement and Sellers shall have the right to enforce any remedies available to it for such default.

(C) In the event of any repudiation by Buyers hereunder it is agreed that recovery of the difference between market price and the contract price for Oil hereunder is not an adequate remedy under the circumstances and that the measure of damages hereunder for repudiation by Buyers shall be an amount equal to the loss of profit of Sellers plus the loss of any profit of Sellers' suppliers in respect of which Sellers shall or may be liable to such suppliers, in each case computed on the basis that all undelivered Oil hereunder would have been delivered on the date of such repudiation or the declaration thereof by Sellers.

(D) If, during the term of this contract Buyers fail to pay timely for Oil sold and delivered to Buyers hereunder or the financial responsibility of Buyers becomes impaired or unsatisfactory to Sellers, security and/or a guarantee satisfactory to Sellers shall be given by Buyers upon demand by Sellers who may withhold delivery until payment or such guarantee and/or security is received by Sellers.

10. ASSIGNMENT

Sellers may at any time and from time to time make arrangements under which another company, designated by Sellers, shall in all respects be substituted for Sellers with respect to the sale and delivery under this Agreement of all or any part of the Oil. To the extent that the terms and conditions hereof shall have been fulfilled by Buyers to such company under any such arrangement, Buyers shall be deemed to have fulfilled its obligations to Sellers hereunder, and to the extent that the terms and conditions hereof shall have been fulfilled by such company to Buyers under any such arrangement Sellers shall be discharged from its obligations to Buyers hereunder; PROVIDED always that Sellers shall stand bound as guarantor to Buyers of the performance by such company under any substitution to which this clause refers.

11. ARBITRATION

Except as otherwise provided herein, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in the City of New York, New York, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

12. GOVERNING LAW

This Agreement shall be deemed to have been made in New York, New York and shall be construed and shall take effect in accordance with the law of the State of New York.

13. NOTICES

Except as otherwise provided herein, all notices and other communications to be given hereunder by one party to the other shall be in writing and shall be deemed to have been sufficiently given if sent by mail, postage prepaid, or by telegraph or cable (confirmed by mail) to the address stipulated elsewhere in this Agreement or to any such other address as either party may notify to the other from time to time.

EXHIBIT B TO AFFIDAVIT OF RICHARD deY. Manning

ASIATIC PETROLEUM CORPORATION

One Rockefeller Plaza

New York, N. Y. 10020

OUR REF.

YOUR REF.

DATE: September 13, 1974

Grand Bahama Petroleum Co., Ltd.
P.O. Box F2521
International Credit Bank Building
Freeport, Bahamas

Gentlemen:

CONTRACT ASC 72/530

We make reference to Clause 2(d) of the Particular Conditions of Sale contained in the subject contract between us dated April 1, 1972.

In accordance with the terms of this clause we wish to notify you of our desire to renegotiate the price of the oil to be supplied during the period January 1, 1975 thru December 31, 1975.

We will be in touch with you concerning a mutually convenient date for the commencement of these negotiations bearing in mind agreement must be reached prior to the end of 1974.

Very truly yours

ASIATIC PETROLEUM CORPORATION

By: C.R. BOHLMANN

C.R. Bohlmann, Manager
Reseller Sales Department

cc: Grand Bahamas
New York

bc: Messrs. M.J. Paulli
J.M. Rochford

[EXHIBIT B]

EXHIBIT C TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
252-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date December 4, 1974

CERTIFIED MAIL

Grand Bahama Petroleum Company Limited
P.O. Box F 2521
International Credit Bank Building
Freeport, Bahamas

Attention: Mr. T.C. Covert

Dear Sirs:

CONTRACT ASC 72/530

On September 13, 1974, we advised you pursuant to Clause 2(d)(iv) that we desired renegotiation of the prices to be paid by you for deliveries of fuel oil under the subject contract during calendar year 1975. Since that date we have had three meetings with representatives of your company, as well as a number of telephone conversations with them.

In the course of these meetings and telephone conversations we advised you that for calendar year 1975 we would require a price of $9.95 per barrel for 300 visc. oil, such price to increase with increases in Host Government Take after November 7, 1974. Your representatives indicated to us that you were unable to pay this price.

In our discussions with you we indicated that we would be prepared to consider favorably a proposal from you to pay a price of $9.95 per barrel for 300 visc. oil which would also increase with increases in Host Government Take after November 7, 1974, provided such price would apply only for the first six months of 1975 and would be renegotiable during the period May 1, 1975-June 30, 1975 for oil to be delivered during the last six months of 1975, with the contract to terminate on June 30, 1975 if no price is agreed by that date for oil to be delivered during the last six months of 1975.

Grand Bahama Petroleum Company Limited December 4, 1974

Based on our most recent meeting held on December 2, 1974 and the views expressed by your representatives at that meeting, it appears to us that there is little, if any, likelihood of our two companies agreeing on the price to be payable by you for fuel oil to be delivered during 1975. Accordingly, if we are unable to reach agreement on this 1975 price by December 31, 1974 we will on that date be giving you 60 days' notice of termination as provided in Clause 2(d)(iv), such termination to be effective March 2, 1975.

Very truly yours,

ASIATIC PETROLEUM CORPORATION

By: /s/ M.J. Paulli

M.J. Paulli, Vice President

cc: New England Petroleum Corp. (By hand)
Attn: Mr. R. Weinand

EXHIBIT D TO AFFIDAVIT OF RICHARD deY. MANNING

GRAND BAHAMA PETROLEUM COMPANY LIMITED
P.O. BOX F2521
INTERNATIONAL CREDIT BANK BUILDING
FREEPORT, BAHAMAS

TELEPHONE
(809) 352-7682

CABLES: PETCO
TELEX: PETCO FP033

December 10, 1974

Mr. M. J. Paulli
Asiatic Petroleum Corp.
One Rockefeller Plaza
New York, N. Y. 10022

Contract ASC 72/530

Dear Mr. Paulli:

In response to your letter of December 4, 1974, we must advise you that we do not believe either of the proposals advanced by you in the course of our meetings, and set forth in said letter, constitute "renegotiation" of the price of fuel oil as contemplated by Clause 2(d)(iv) of the Contract. Under the circumstances existing in the markets which this Company supplies (which are well known to you), neither of your unilateral proposals could be construed as good faith efforts to renegotiate the fuel oil price; rather these unilateral proposals are nothing more than an obvious effort on your part to terminate this contract which both parties intended to continue in effect until 1978.

Moreover, we think it highly inappropriate for you to suggest a termination of this contract prior to your having substantiated all of the alleged increases in Host Government Take ("HGT") which have been paid by this company upon your representations that such increases had been imposed upon you or your supplier. We are entitled to, and hereby request that you supply, statements from an independent certified public accountant, verifying the absolute net effect upon the net income of you or your supplier, of every price increase imposed upon this company by your company as increased HGT, since April 1, 1972.

Very truly yours,

T.C. COVERT

T. C. Covert

[EXHIBIT D]

EXHIBIT E TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
252-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date December 17, 1974

Mr. T.C. Covert
Grand Bahamas Petroleum Co., Ltd.
P.O. Box F 2521
International Credit Bank Building
Freeport, Bahamas

Dear Mr. Covert:

CONTRACT ASC 72/530

This is in reply to your letter of December 10, 1974 in reply to our letter of December 4, 1974 regarding the price negotiations which have taken place between our two companies with respect to fuel oil to be sold and delivered by us to you during 1975 under the above contract.

We do not accept your contention that our price proposal for fuel oil to be delivered in 1975 does not constitute "renegotiation" as contemplated by Clause 2(d)(iv) of the contract nor your allegation that we have not been making good faith efforts to renegotiate the fuel oil price. Furthermore, we do not understand your reference "Under the circumstances existing in the markets which this Company supplies (which are well known to you)." If you intend to mean the terms and conditions on which you re-sell fuel oil purchased under the above contract, we have no specific knowledge of these terms and conditions. However, if you intend to mean the prevailing market conditions for residual fuel oil in the Caribbean and the U.S. East Coast, we are fully satisfied that the prices we have requested for 1975 deliveries are extremely reasonable for the volume and period involved. Neither can we let go unchallanged your unjustified charge that we are seeking to terminate this contract. Asiatic and Grand Bahamas have had a close and meaningful relationship for a number of years which we would like to see continued. However, we cannot accept responsibility for your rejection of our offer which we consider to be a very fair and reasonable one in light of the circumstances existing today, nor are we prepared, merely to continue a relationship, to sell oil to you

[EXHIBIT E]

EXHIBIT E TO AFFIDAVIT OF RICHARD deY. MANNING

Mr. T.C. Covert

December 17, 1974

in 1975 at prices below those which we believe will be generally available from other buyers of residual fuel oil.

We note the request in the second paragraph of your letter for statements from an independent certified public accountant verifying the net effect of the HGT increases which you have paid since April 1, 1972. It seems inappropriate to us that you should introduce this subject in correspondence relating to price renegotiations for fuel oil to be delivered during 1975. Nevertheless, we will deal with this request herein.

On each occasion that an HGT increase has been sought since April 1972, we have furnished you with evidence thereof including copies and translations of the Venezuelan Official Gazette, an accountant's certificate on royalty increases and detailed calculations showing how each HGT increase has been determined. We have assumed that this detailed data satisfied you as to the applicability and accuracy of each HGT increase. Nevertheless, we are arranging to obtain additional accountants' certificate as may be necessary and will forward them to you as soon as they are made available to us.

Very truly yours,

ASIATIC PETROLEUM CORPORATION

By: M. J. PAULLI

M.J. Paulli
Vice President

EXHIBIT F TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation
Telephone 212-2244 (Area Code)
One Rockefeller Plaza, New York, N.Y. 10020

NEW ENGLAND PETROLEUM CORP
RECEIVED
DEC 31 1974

Our Ref.
Your Ref.
Date December 30, 1974

New England Petroleum Corporation
825 Third Avenue
New York, N.Y. 10022

Attention: Mr. R. G. Weinand

Contracts ASC 72/527 (NEP) & ASC 72/530 (Petco)

Dear Sirs:

In the telephone conversation this morning between Messrs. Weinand/Paulli, Mr. Weinand requested that Asiatic defer for a period of ten days the giving of notices of termination of the above contracts which we had indicated in our letters of December 4, 1974 to New England and Grand Bahama Petroleum Company Ltd. ("Petco") would be given on December 31, 1974 if agreement on the prices payable for deliveries to be made during 1975 was not reached by that date. We understand that the purpose of this request was to permit a further meeting between Messrs. Carey and Weinand on behalf of New England and Petco and Messrs. Ritchie and Paulli on behalf of Asiatic to negotiate these prices as well as the prices payable for deliveries to be made during the twelve month period April 1, 1975 - March 31, 1976, under Contract ASC 68/071 between Asiatic and New England.

We have now received and acknowledge receipt of your letter of today in which you expressed the agreement of New England and Petco to extend for ten days the period of time within which Asiatic may serve notices of termination of the above contracts. In order to allow for another negotiation meeting as mentioned above and in reliance on your letter we agree, without prejudice to our respective rights under the contracts, to defer sending any notices of termination under Contracts ASC 72/527 and ASC 72/530 until January 10, 1975, if you will agree

EXHIBIT F

EXHIBIT F TO AFFIDAVIT OR RICHARD deY. MANNING

that any notice of termination we may send will have an effective termination date of March 2, 1975. Accordingly, any notices of termination given by us shall be deemed to be given timely under the contracts if given to you or Petco on or before January 10, 1975 and shall have an effective termination date of March 2, 1975. We also agree to defer until after January 10, 1975 the filing of a demand for arbitration under Contract ASC 68/071 which we indicated in our letter to New England of December 24, 1974, we were prepared to do if New England persisted in its position that Asiatic had no right to require New England to renegotiate the price of fuel oil to be delivered during the twelve month period commencing April 1, 1975.

While we note your comments with respect to the subject contracts that we have not negotiated at all much less negotiated in good faith, we must reject them as being totally without foundation.

If you agree with the provisions of the second paragraph of this letter, please indicate such agreement on behalf of yourself and Petco by signing the duplicate of this letter at the place indicated thereon and returning it to us.

Very truly yours,

ASIATIC PETROLEUM CORPORATION

By: M. J. Paulli

M. J. Paulli
Vice President

Consented and Agreed for and on behalf of
New England Petroleum Corporation and
Grand Bahama Petroleum Company Ltd.

cc: Grand Bahama Petroleum Company Ltd.
Attention: Mr. T. C. Covert

I agree with the provisions of the second paragraph of this letter to the extent that it applies specifically to contracts ASC 72/527 (NEP) and ASC 72/530 (Petco). We do not have any understanding that Asiatic has a right to renegotiate the price of fuel under contract ASC 68/071, therefore, we reconfirm our position there is no contractual basis nor has any explicit verbal commitment been made by Nepco to renegotiate contract ASC 68/071. Except as we have stated our concurrence with part of Paragraph 2, and except for the reservation of rights without prejudice, we do not agree with the balance of the letter.

EXHIBIT G TO AFFIDAVIT OF RICHARD deY. MANNING

ASIATIC PETROLEUM CORPORATION
One Rockefeller Plaza
New York, N. Y. 10020

AIR MAIL

OUR REF:

YOUR REF.

DATE: January 10, 1975

CERTIFIED MAIL

Grand Bahama Petroleum Limited
P.O. Box F2521
International Credit Bank Building
Freeport, Bahamas

Attention: Mr. T.C. Covert

Dear Sirs:

We refer to the provisions of Clause 2(d)(iv) of the Particular Conditions of Sale of the contract between us, ASC 72/530, dated as of April 1, 1972, as amended, and to the second paragraph of our letter to New England Petroleum Corporation dated December 30, 1974, which was consented and agreed to on your behalf. This December 30, 1974 letter related to the above-mentioned contract with you and to our contract ASC 72/527, with New England Petroleum Corporation, and a copy of that letter was sent to you.

Since you and we have been unable to agree on the prices to be paid for fuel oil to be sold and delivered by us to you under the above-mentioned contract during 1975, we hereby exercise our right, pursuant to Clause 2(d)(iv), to terminate this contract effective March 2, 1975 and this letter shall constitute written notice thereof as required by the contract.

Very truly yours,

ASIATIC PETROLEUM CORPORATION

/s/ J. D. RITCHIE

J. D. Ritchie
President

cc: Grand Bahama Petroleum Company Limited
c/o New England Petroleum Corporation
825 Third Avenue
New York, New York 10022
Attention: Mr. R. G. Weinand

EXHIBIT H TO AFFIDAVIT OF
RICHARD deY. MANNING

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 MANOVER 2-3000

INTERNATIONAL TELEX 620570

TELETYPE 710 581-0330

CABLE ADDRESS: CRAVATH NEWYORK

EDWARD B. PINNEY
L. R. BRESLIN, JR.
HAROLD R. MEDINA, JR.
COUNSEL

6, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE 265 81-17
TELEX 29-830

TERMINAL HOUSE
52 GROSVENOR GARDENS
LONDON, SW1W 0AU, ENGLAND
TELEPHONE 01-730 5203
TELEX 917240

CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON S.W.1

MAURICE T. MOORE
BRUCE BROMLEY
ROSWELL L. GILPATRIC
THOMAS A. MALLENDAN
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER
JOHN H. MORSE
CHARLES R. LINTON
WILLIAM D. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
ALLEN H. MERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHERER, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.

JOHN F. HUNT, JR.
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDMONDS
DAVID O. CORBETT
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK

ANTITRUST ARBITRATION
CASE
MAY 23
No. EXHIBIT

December 27, 1974

New England Petroleum Corp.;
Grand Bahama Petroleum Co., Ltd.

Dear Mr. Greenspoon:

Following up on my telephone conversation with Mr. Manning yesterday morning, I would appreciate your supplying us, as counsel for Asiatic Petroleum Corporation ("Asiatic"), with the following particulars with respect to each of the two demands for arbitration dated December 18 which have been filed with the American Arbitration Association on behalf of the above companies (we assume that the New England Petroleum Corporation demand erroneously refers to contract # 72-572 and is intended to refer to contract # 72-527):

1. the contract provisions (by paragraph number and by quotation if less than a full paragraph) that you allege were breached by Asiatic;

2. the date of the alleged breach of contract;

3. the general nature of the alleged breach of contract;

4. the specific acts or omissions of Asiatic which you claim gave rise to the alleged breach of contract, and, with respect to each:

(a) the names of the person or persons who acted or failed to act for Asiatic;

(b) the date of each such act or omission;

(c) with respect to each such act or omission, whether it is referred to in any

Ex H

EXHIBIT H TO AFFIDAVIT OF
RICHARD deY. MANNING

written document in your possession and, if so, the nature of the document, its date and the names of the sender(s) and recipient(s);

(d) if any such act or omission involved an oral communication between Asiatic and the company demanding arbitration, the date of such communication, the place at which it occurred and the names of the persons who made and heard it;

5. for each item of damages claimed the amount, basis and method of calculation thereof; and

6. the nature of the "specific performance" demanded.

As I stated to Mr. Manning the above demands for arbitration are so vague and general as not to give adequate formal notice to Asiatic of the nature of the dispute. I would therefore appreciate your having the information requested above in my hands not later than January 2, 1975, so that we can confirm whether or not there is any arbitrable dispute.

Very truly yours,

John R Hupper

Samuel Greenspoon, Esq.,
Messrs. Eaton, VanWinkle & Greenspoon,
600 Third Avenue,
New York, N. Y. 10019.

39A

Copies to Lenore Siegel, Esq.,
Tribunal Administrator,
American Arbitration Association,
140 West 51st Street,
New York, N. Y. 10020.

Richard deY. Manning, Esq.,
Messrs. Manning, Carcy, Redmond & Tully,
122 East 42nd Street,
New York, N. Y. 10017.

EXHIBIT I TO AFFIDAVIT OF
RICHARD deY. MANNING

AMERICAN ARBITRATION ASSOCIATION
CASE No.
MAY 23
No. C1M EXHIBIT

January 6, 1975

John Hupper, Esq.
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Re: New England Petroleum Corp;
Grand Bahama Petroleum Co. Ltd.

Dear Mr. Hupper:-

I acknowledge receipt of your letter dated December 27, 1974. You are correct that Contract No. 72-572 should be Contract No. 72-527.

Many of the items in your letter do not seem appropriate at this time, but seem to be more in the nature of discovery.

However, so that you will be fully advised in responding to Nepco's and Petco's claims, please be advised as follows:-

R 1. The contract provisions which each claims that Asiatic breached are numbered 2(d)(iii) and (iv).

2. The breaches are that Asiatic Petroleum did not negotiate at all, did not negotiate in good faith, sought to impose as a further condition for continuation of the contracts an unreasonable increase in price, and Nepco's and Petco's consent

Exh I

EXHIBIT I TO AFFIDAVIT OF
RICHARD deY. MANNING

John Hupper, Esq.
January 6, 1975

thereto did not act reasonably in the premises, and in general failed to comply with the requirements of reasonableness and good faith which are inherent in every contract; and further that Asiatic Petroleum's demands were unconscionable and would impose an unconscionable price upon Nepco and Petco and upon the ultimate consumer for whom, to Asiatic Petroleum's knowledge, the product was destined; and further that Asiatic Petroleum's threats to terminate, violate the contract provisions in the light of the foregoing.

3. So far as specific performance is concerned that remedy could take many forms, as for example:

a) The arbitrators may fix a reasonable price;

b) The arbitrators may require Asiatic Petroleum to negotiate in good faith within limits fixed by the arbitrators;

c) The arbitrators may set aside any attempted termination and rule that no renegotiation is proper at this time.

I can think of many other remedies, but I believe the foregoing examples should suffice.

With respect to damages it is far too early for me to set forth the items, or the amount or the basis and method of calculation thereof. It may be that no damages will appear at all; on the other hand there may be damages.

With respect to items 2 and 4 of your letter dated December 27, 1974, I would think that the foregoing statement of the contract provisions and the nature of the breaches would give you some indication of the dates, etc. which are involved.

EXHIBIT I TO AFFIDAVIT OF
RICHARD deY. MANNING

John Hupper, Esq.
January 6, 1975

In any event those items strike me as really being discovery items and should be deferred at least for the present time.

Sincerely yours,

SNG/fd
cc: Richard deY. Manning, Esq.
Lenore Siegel, Esq.
American Arbitration Assn.

EXHIBIT J TO AFFIDAVIT OF
RICHARD deY. MANNING

two rather than three arbitrators?

MR. ROCHFORD: Yes.

MR. GREENSPOON: Preliminarily I think so far as we're concerned, that two can and should go ahead on the basis that your Honor stated it.

I was going to --

MR. COLIN: There is a second alternative, that is, we may proceed in this instance with two and fill out the panel --

MR. McAFEE: Yes.

MR. GREENSPOON: That is what I will suggest.

MR. McAFEE: For reason I will state, and would like to go ahead with the two arbitrators for purposes of resolving what these people say is an emergency.

MR. GREENSPOON: That's right.

MR. MANNING: Yes.

MR. McAFEE: Because we have a problem too because that contract runs out on Sunday and we're going to have 70,000 barrels not being lifted. What are we going to do with them, put them in Lake Miricibo, and

EXH J

EXHIBIT J TO AFFIDAVIT OF
RICHARD deY. MANNING

the Court reports this, the Court says as noted above, "Asiatic has stated it will supply to either the petitioners or their customers fuel oils in quantities called for under the contract in question at prices consistent with those prevailing in the market." That is pending final determination by this panel. That is our position.

We would like to know what their position is.

Are they accepting that?

MR. COLIN: Mr. McAfee, let me ask when it is agreeable to your side that the arbitrators now present render an interim ruling on the question of continuing supply until such time as a final substantive ruling is entered?

MR. McAFEE: I do object to that.

MR. COLIN: You do?

MR. McAFEE: Because I say that ruling has already been made by the Court.

And they can go back if they have additional facts. And I don't think this adds materially to what they already submitted

EX H J

EXHIBIT K TO AFFIDAVIT OF
RICHARD deY. MANNING

Mr. Burns has some Solomonic wisdom to dispense.

MR. BURNS: In order to try to expedite this thing, and to avoid a preliminary redetermination on the question of authority to issue a ruling here on your motion to dismiss, which hasn't yet been made, we should like to suggest a stipulation of both sides along these lines that you continue lifting the oil that you pay them the contract price, deposit it, just to bring the people together, to deposit in an escrow account 75 percent of the difference between the contract price, which is 2.05, forgetting the Host Government Take and the 3.17 figure which may be arbitrary in some respects but it's a figure, in an escrow account, and we're prepared to, subject to everybody's schedules, to see if we can get this matter resolved very promptly and start sitting next week.

MR. COLIN: We're hopeful in finishing next week.

MR. BURNS: We're hopeful of moving this

(Ex H. K)

EXHIBIT K TO AFFIDAVIT OF
RICHARD deY. MANNING

thing day to day which means we may start at three in the afternoon and work late into the night.

MR. BURNS: I don't know what my calendar looks like. I did not anticipate this kind of an emergent situation. That is a suggestion that we're prepared to put forward to the parties so that we can get off that.

MR. McAFEE: That would be the difference between say, the posted cargo price today plus any H.G.T.

MR. GREENSPOON: Oh, H.G.T. of course.

MR. COLIN: It's 2.05 to 3.17, it's a dollar twelve., and you, we would have in suspension approximately .29¢.

MR. McAFEE: No.

MR. ROCHFORD: No.

MR. McAFEE: Oh, no, that would be practically over a dollar probably.

MR. MANNING: No.

MR. McAFEE: On the basis --

MR. DEAN: The difference is a dollar twelve.

MR. COLIN: There would be escrow of 75

EXH K

percent of that difference so you would have about .29¢ the way my mental arithmetic works.

MR. ROCHFORD: How was the difference arrived at?

MR. COLIN: It is just arbitrary to escrow 75 percent and to leave open 25 percent.

MR. ROCHFORD: Because I was out of the room, I don't know what you're talking about.

MR. McAFEE: You determine what you leave open.

MR. COLIN: .29¢ and all subject to the final award.

MR. ROCHFORD: .79¢ of a dollar twelve?

MR. DEAN: No.

MR. COLIN: It would be 25 plus nine. It would be a dollar nine.

MR. GREENSPOON: It would be .28¢.

MR. BURNS: Leave to counsel to work out the escrow.

MR. McAFEE: An escrow fund could be put under investment and go to the winner.

MR. GREENSPOON: CD's.

Ex # K

EXHIBIT K AND L TO AFFIDAVIT OF RICHARD deY. MANNING

MR. BURNS: I don't know if the American Arbitration Association can do that and we can put in it joint name in the Chase Manhattan BAnk.

MR. McAFEE: Chemical Bank.

MR. MANNING: His clients'.

MR. ROCHFORD: Exactly how much money would be escrowed per barrel?

MR. GREENSPOON: .84¢ under this theory.

MR. ROCHFORD: .84¢.

MR. McAFEE: Would you hastily check, John, with your client? Before we check, is it all right with you?

MR. GREENSPOON: He will check with Carey.

MR. McAFEE: You probably wouldn't lift the cargo in the meantime.

MR. COLIN: Off the record.

(Off the record discussion held.)

MR. COLIN: Back on the record.

Will one of you put on the record your understanding and the other acquiescence?

MR. GREENSPOON: During the pendency of this arbitration and subject to the final award of the arbitrators, retroactively to

EXH K
EXH L

EXHIBIT L TO AFFIDAVIT OF
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midnight March 2, 1975 --

MR. McAFEE: Retroactively? We havn't reached March 2. Say effective.

MR. GREENSPOON: But the award is going to be retroactive.

MR. McAFEE: I see. Oh, the award will be retroactive.

MR. GREENSPOON: Where were we?

MR. McAFEE: The award can't be retroactive to March 2nd. It has to be retroactive to January 1st.

MR. MANNING: No, Ralph, if you prevail the award would be retroactive only to March 2nd because the contract would have been terminated in a 60-day rundown period.

MR. McAFEE: I'm sorry, I wasn't supposed to handle this and I don't know all the details.

MR. McAFEE: If we prevail it would be retroactive to January 1st. It depends on whether a contract is in existence or whether a contract was terminated.

MR. ROCHFORD: That is not correct because they are paying the contract price

Exh L

EXHIBIT L TO AFFIDAVIT OF
RICHARD deY. MANNING

for deliveries made between January 1st and March 2nd. so it's retroactive in either case to March 2nd.

MR. GREENSPOON: I have lost my train of thought. Let's start all over again.

MR. McAFEE: No, we got that far without dispute.

MR. GREENSPOON: I forgot what I said. I was in the middle of a sentence.

It is stipulated and agreed and subject to final award of the arbitrators as to price, terms or whatever may be obtained therein, retroactive to midnight, March 7, 1975, as follows:

1. Asiatic Petroleum will continue to supply at a rate of from 63,000 barrels to 77,000 barrels per day of No. 6 fuel oil high sulphur, and the petitioners, New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd. will continue to lift and purchase such quantities of No. 6 high sulphur fuel oil during the pendency of this arbitration.

Off the record for a moment.

EXH L

EXHIBIT L TO AFFIDAVIT OF
RICHARD deY. MANNING

(Off the record discussion held.)

MR. GREENSPOON: And until the award of the arbitrators.

MR. COLIN: Off the record.

(Off the record discussion held.)

MR. GREENSPOON: No. 2: The petitioners will pay to the Respondent, Asiatic Petroleum Corporation the price of $2.05 per barrel F.O.B. Caribbean plus all H.G.T's which have become effective since April 1, 1972, and which will become effective subsequent to today., and up to the date of the award of the arbitrators, without the petitioners conceding that the amount of H.G.T heretofor charged or claimed by respondent is correct.

3. In addition, the petitioners will deposit in certificates of deposit, in a major New York City bank the sum of .84¢ per barrel, and this sum will be distributed to the respective parties in accordance with the final award of the arbitrators.

MR. ROCHFORD: I think we have to deal with the timing of that deposit. I think we have to deal with --

Exh L

EXHIBIT L TO AFFIDAVIT OF
RICHARD deY. MANNING

MR. GREENSPOON: You wanted a 30-day -- you wanted to change the credit term to 30 days; isn't that right?

Okay.

4. The escrow deposits shall be made whenever the price for the fuel oil is payable to Asiatic but not later than 30 days from the invoice date which shall also be payable on the same date.

MR. ROCHFORD: I haven't thought it through but you said you wanted 30 days. We wanted 30 days in connection with the negotiation which you people didn't accept.

MR. GREENSPOON: Yes.

MR. ROCHFORD: Now, we're talking about a provisional arrangement not under the contract which we consider terminates Sunday night, so let's not say the contract this or the contract that. WE're talking about a provisional arrangement where we have to agree to terms.

We're not getting the benefit of the use of this money although the capital to produce that oil is going to be there, and

EXH L

EXHIBIT L TO AFFIDAVIT OF
RICHARD deY. MANNING

applied, and --

MR. McAFEE: What do you want?

MR. ROCHFORD: I'm wondering whether 30 days is appropriate?

MR. McAFEE: What do you want?

MR. GREENSPOON: Let's go off the reoctd. Why clutter up the record here.

MR. ROCHFORD: I want to think about it. I wonder whether it's appropriate.

MR. McAFEE: It's too short?

MR. ROCHFORD: It's too long.

MR. GREENSPOON: Let's go off the record.

(Off the record discussion held.

MR. COLIN: Back on the record.

MR. McAFEE: I have one change where you started off it is hereby stipulated and agreed.

It is stipulated and agreed subject to final award of the arbitrators on price terms and whatever else.

I would just like to strike that phrase beginning re: price, terms and whatever else. Just leave it "award of the arbitrators." It will be our position,

EXH. L

EXHIBIT L TO AFFIDAVIT OF
RICHARD deY. MANNING

which I will argue rather extensively to you, that you have nothing to do with prices. You were just supposed to rule on whether there is a breach of contract here, except eventually if you have to award damages.

MR. COLIN: Is that agreeable to you?

MR. GREENSPOON: I don't mind that, because whatever the award contains, it contains.

MR. McAFEE: So we have agreed upon a stipulation.

MR. BURNS: All right.

MR. COLIN: Now I assume you gentlemen have instructed the reporter in whatever way you require him to give you copies of this.

MR. GREENSPOON: I would suggest that he gives us immediately if he can by Monday morning, since this is Friday, that portion of it that relates to where we began with the stipulation.

MR. COLIN: You want the stipulation?

MR. GREENSPOON: Yes.

MR. COLIN: I think the next order of business is to put on the record the

Exh L

EXHIBIT M TO AFFIDAVIT OF
RICHARD deY. MANNING

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CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON S.W.1

April 11, 1975

New England Petroleum Corp. and
Grand Bahama Petroleum Co., Ltd., Petitioners and
Asiatic Petroleum Corp., Respondent,
AAA No. 1310-1385-74

Dear Mr. Greenspoon:

I refer to the agreement between petitioners and Asiatic evidenced by the stipulation dictated on the record in this arbitration proceeding on February 28, 1975, commencing at page 50 of the transcript.

Asiatic agreed to supply and petitioners agreed to lift and purchase No. 6 fuel oil at a rate of from 63,000 to 77,000 barrels per day, commencing March 2, 1975, and continuing during the pendency of the arbitration. The stipulation further provides that petitioners will deposit in escrow the sum of $.84 for each barrel so supplied, such amounts to be distributed, together with interest thereon, in accordance with the final award of the Arbitrators. That stipulation was entered into by Asiatic in reliance on the sworn statements of Mr. Weinand and others to the effect that such an interim arrangement was necessary to prevent serious hardship to petitioners' customers and consumers of electricity and that petitioners were unable to obtain supplies of such product from other sources.

Despite those statements, petitioners nominated no vessels until March 14, at which time they purported to nominate two vessels for loading March 14 and 15.

Despite lack of adequate notice, Asiatic's suppliers undertook to load and did load those vessels as promptly as

Exh M

EXHIBIT M TO AFFIDAVIT OD
RICHARD deY. MANNING

possible. Asiatic requested that petitioners adhere to normal practice and lift the volumes covered by the stipulation on a regular weekly basis, furnish Asiatic a running 30-day lifting program and give at least 7 days' notice of future nominations.

Petitioners agreed on March 14 to "regularize" their liftings, to supply and update a 30-day lifting program and to comply with the stipulation as to the volumes to be lifted.

On March 18 and 19 petitioners purported to nominate two other vessels for loading on March 18 and 20 with no advance notice to Asiatic. Solely as an accommodation to petitioners, Asiatic arranged with its suppliers for those vessels to be loaded on March 20.

To date, petitioners have failed to furnish Asiatic with a 30-day lifting program.

To date, petitioners have lifted and purchased a total of 1,415,348 barrels, or approximately 36,300 barrels per day under the stipulation, rather than the minimum 63,000 barrels required. Petitioners have failed to regularize their liftings in any manner. Moreove petitioners have nominated only one vessel for Ipadi for the remainder of the month of April 1975, th NEPCO FRIENDSHIP, committed to lift about 260,000 barrels on April 12.

As a result of petitioners' failure to comply with the terms of the stipulation, Asiatic and its suppliers have suffered severe embarrassment and injury. Asiatic's suppliers are compelled by the stipulation to produce and hold available for petitioners the amounts of oil required by the stipulation. Petitioners' failure to lift those quantities has required the use of emergency storage facilities at substantial additional cost to Asiatic's suppliers and they have been obliged to forego opportunities for sale of such oil to other customers. Those suppliers cannot continue to store such quantities of oil and have been and will be forced to dispose of them as opportunities are presented, possibly at distress prices.

In addition, we have on at least two occasions requested a meeting with you to negotiate an escrow agreement covering the sums to be deposited pursuant to the

EXHIBIT M TO AFFIDAVIT OF
RICHARD deY. MANNING

stipulation. We had no response to those requests until this afternoon when, by coincidence, Mr. Dean received your telephone call. Pursuant to your request, I am enclosing a draft of escrow agreement which we have prepared for your comments. We are informed that the first escrow payment will be due on or about April 20 and it is essential that such an agreement be reached immediately.

Accordingly, we are requesting that Ms. Siegel of the American Arbitration Association convene an emergency meeting of the Arbitrators, if possible on April 14. The purpose of such meeting would be to consider the possible alternatives including modification or termination of the stipulation and possible imposition of sanctions or damages. We estimate that such a meeting would not require more than two hours. I am sending copies of this letter to Ms. Siegel for immediate distribution to the Arbitrators.

Very truly yours,

Ralph L. McAfee

Samuel Greenspoon, Esq.,
Messrs. Eaton, VanWinkle & Greenspoon,
600 Third Avenue,
New York, N. Y. 10019

Encls.

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BY HAND

Copy w/encls. to Ms. Lenore Siegel,
Tribunal Administrator,
American Arbitration Association,
140 West 51st Street,
New York, N. Y. 10020

BY HAND

EXHIBIT N TO AFFIDAVIT OF
RICHARD deY. MANNING

April 15, 1975

Ralph L. McAfee, Esq.
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Re: New England Petroleum Corp. and
Grand Bahama Petroleum Co. Ltd.,
and Asiatic Petroleum Corp.
AAA No. 1310-1385-74

Dear Mr. McAfee:-

I have been out-of-town and returned this afternoon. I have read your letter dated April 11, 1975.

I have also read the escrow enclosed and I will have to discuss the matter of the escrow with Mr. Manning and possibly others at New England. However, there are several problems raised by the escrow, especially by the fact that you are putting all of the onus on the petitioners in the first instance at least.

I might add that Mr. Manning is out-of-town at present and I cannot reach him although I have tried to do so since my return this afternoon.

I cannot quarrel with your figures as to liftings and the like set forth in your letter dated April 11, 1975. I do know, however, that Mr. Rochford insisted upon conditions not contained in the stipulation before he would authorize any liftings at all.

EXH N

EXHIBIT N TO AFFIDAVIT OF
RICHARD deY. MANNING

It appeared to me at the time that the conditions which Mr. Rochford wanted to impose on the liftings were the same conditions more or less as were imposed in the contract which Mr. Rochford claims no longer exists. It strikes me that Mr. Rochford wants to have the best of both worlds and I do not think that is appropriate in the premises.

I cannot recall "at least two occasions" when a meeting with me was requested. I telephoned to Mr. Dean at my earliest available opportunity and requested him to forward the papers to me, to wit, the stipulation and escrow, so that they could be reviewed by Mr. Manning and others more familiar with the facts.

I do not see any purpose in convening an emergency meeting of the arbitrators and in any event my Court schedule this week is so tight that I could not possibly attend any meeting of the arbitrators except late in the afternoon after the Court sessions are concluded.

The notion of modification of the stipulation which you suggest in the last paragraph of your letter might be satisfactory to us but until I can discuss the matter with Mr. Manning and others it is impossible for me to respond.

I will bend my every effort now to see what I can do along these lines to alleviate the problems which you claim have arisen. However, I am not an operating person as you well know and hence am in no position to even discuss an appropriate modification.

I am sending 3 copies of this letter By Hand to Ms. Lenore Siegel, Tribunal Administrator.

Very truly yours,

SNG/fd
cc: Ms. Lenore Siegel

EXHIBIT O TO AFFIDAVIT OF
RICHARD deY. MANNING

New England Petroleum Corporation &
Asiatic Petroleum Corporation;
Grand Bahama Petroleum Co. Ltd. and
Asiatic Petroleum Corporation --
No. 1310-1385-74

This will reduce to writing the agreement between our respective clients outlined on the record in this proceeding on April 18, 1975, modifying the agreement entered by stipulation on February 28, 1975.

New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd. ("Petitioners") and Asiatic Petroleum Corporation ("Asiatic") have agreed as follows:

1. Asiatic will supply, at a rate of from 63,000 to 77,000 barrels per day, No. 6 high sulfur fuel oil ("oil") and petitioners will lift and purchase such quantities of oil during the pendency of the above arbitration proceeding.

2. Petitioners will pay to Asiatic the price of $2.05 per barrel F.O.B. Caribbean plus all HGT which has become effective since April 1, 1972, and which may become effective after the date hereof and up to the date of a final judgment confirming the award of the Arbitrators (without petitioners conceding that the amount of HGT heretofore charged or claimed by Asiatic is correct).

3. In addition, Petitioners will deposit in an escrow account at The Chase Manhattan Bank, N.A., the sum of $.84 per barrel of oil lifted and purchased by petitioners hereunder and those sums will be distributed to the parties in

EXH O

EXHIBIT O TO AFFIDAVIT OF
RICHARD deY. MANNING

accordance with paragraph 4 of the Escrow Agreement dated April 25, 1975, between the parties hereto and said Bank.

4. Deposits to said escrow account shall be made whenever the price for oil is payable to Asiatic but not later than 30 days from the invoice date, which invoice shall also be payable on the same date.

5. Commencing immediately, petitioners will furnish weekly to Asiatic in writing a running 30-day lifting program showing estimated dates and volumes for which nominations will be made hereunder.

6. Each nomination by petitioners hereunder shall be made in writing and shall be given not less than 7 days in advance of the expected loading date for each such vessel; Asiatic may, for any good business reason, reject in writing any such nomination within 48 hours after receipt, in which event it shall notify petitioners of the earliest alternative date for which a nomination can be made.

7. In the event that petitioners nominate a vessel less than 7 days in advance of the expected loading date and Asiatic agrees to load such vessel as an accommodation to petitioners, any delay to the vessel (a) while awaiting berth or (b) while in berth due to the fault of the vessel, shall be for petitioners' account.

8. For each calendar month beginning May 1975, petitioners shall nominate vessels to lift oil in accordance with paragraphs 5-7 above and shall lift and purchase hereunder a number of barrels of oil not less than 63,000 multiplied by the number of days in each such calendar month.

EXHIBIT O TO AFFIDAVIT OF
RICHARD deY. MANNING

9. Commencing on the date of entry of a final judgment confirming the award of the Arbitrators herein petitioners shall lift and purchase any underlifted oil as follows:

(a) The amount of underlifted oil shall be determined by multiplying the number of days between March 2, 1975, and the date of such final judgment by 63,000 and subtracting from the result the total number of barrels lifted and purchased by petitioners hereunder on and prior to the date of such final judgment.

(b) Petitioners shall have 30 days or a number of days equal to the number of barrels of underlifted oil divided by 77,000, whichever is longer, to lift and purchase the total number of barrels of underlifted oil as calculated under paragraph 9(a) hereof. Paragraphs 5-7 above shall apply to such purchases.

(c) The price to be paid by petitioners for such underlifted oil shall be the price determined by the Arbitrators in their award and the judgment entered thereon to be applicable to oil lifted and purchased pursuant to this agreement. In addition, any increase or decrease in HGT on or after the date of the award of the Arbitrators shall apply to any underlifted oil which petitioners are required to lift and purchase under this paragraph 9 on or after the effective date of such change in HGT.

(d) The price for oil lifted and purchased pursuant to this paragraph 9 shall be paid to Asiatic within 30 days from the date of invoice.

EXHIBIT O TO AFFIDAVIT OF
RICHARD deY. MANNING

10. For purposes of this agreement HGT shall have the same definition as set forth in Contract No. ASC 72/527 dated as of April 1, 1972, between New England Petroleum Corp. and Asiatic (without petitioners conceding that said contract was terminated effective March 2, 1975).

11. In the event that either petitioners or Asiatic fail to comply with any term or condition of this agreement the parties agree that any claim for damages or other relief by the other party may be submitted to the Panel of Arbitrators in this proceeding (which may include one or more successor arbitrators appointed pursuant to the Rules of the American Arbitration Association, should any member of the present Panel be unable to serve). Said Arbitrators shall have jurisdiction to hear and determine such claim and may render an award for damages, if any, together with interest and the fees and expenses of the Arbitrators and other taxable costs and disbursements relating to such proceeding.

Eaton VanWyck & Greenspoon

April 28, 1975 By Samuel M Greenspoon

Attorney for New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd.

Cravath, Swaine & Moore

Attorney for Asiatic Petroleum Corporation

By Ralph L McAfee

EXHIBIT P TO AFFIDAVIT OF
RICHARD deY. MANNING

ESCROW AGREEMENT dated April 23, 1975, among NEW ENGLAND PETROLEUM CORPORATION, a New York corporation, GRAND BAHAMA PETROLEUM COMPANY, LTD., a Bahamas corporation (together hereinafter called "Petitioners"), and ASIATIC PETROLEUM CORPORATION, a Delaware corporation (hereinafter called "Asiatic"), and THE CHASE MANHATTAN BANK, N.A., a national banking association (hereinafter sometimes called the Escrow Agent).

WHEREAS Petitioners and Asiatic are parties to an arbitration proceeding now pending before the American Arbitration Association in New York, New York, Case No. 1310-1385-74 (hereinafter called the Proceeding); and

WHEREAS by stipulation dictated on the record in the Proceeding on February 28, 1975, and amended April 18, 1975, Petitioners and Asiatic entered into an agreement pursuant to which Petitioners are required to deposit in an escrow account 84¢ per barrel for No. 6 fuel oil purchased and lifted by Petitioners from Asiatic under that stipulation from March 2, 1975, until the award of the Arbitrators therein.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

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1. Petitioners and Asiatic appoint and designate THE CHASE MANHATTAN BANK, N.A., 1211 Avenue of the Americas, New York, N. Y., as Escrow Agent, and said Bank accepts such appointment and designation for the purposes and pursuant to the terms herein set forth.

2. Petitioners shall pay to the Escrow Agent the sum of $.84 per barrel of No. 6 high sulfur fuel oil purchased and lifted from Asiatic by Petitioners in accordance with the terms of the aforementioned stipulation. Said amounts together with any interest realized thereon (hereinafter called the Escrowed Cash) shall be held by the Escrow Agent subject to the terms herein set forth.

3. Upon receipt of the sums described in paragraph 2, the Escrow Agent shall invest such sums to the extent feasible in negotiable United States Treasury bills or negotiable time certificates of deposit having maturities of not less than 30 nor more than 60 days (hereinafter called the Escrowed Investment), and shall reinvest the Escrowed Investment in similar securities to the extent feasible. At the end of each calendar month, the Escrow Agent shall furnish statements of account of the Escrowed Cash and Escrowed Investment and any fees and expenses of the Escrow Agent deducted therefrom to Petitioners and Asiatic and their attorneys whose names are set forth in paragraph 11

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hereof.

4. The Escrow Agent shall pay over any Escrowed Cash and transfer the Escrowed Investment:

(a) in accordance with the terms of a written instrument signed by authorized representatives of Petitioners and Asiatic or their attorneys whose signatures are contained in Exhibit A annexed hereto, upon receipt by the Escrow Agent of said written instrument; or

(b) in accordance with the terms of the final award of the Arbitrators in the Proceeding and any judgment entered thereon, upon receipt by the Escrow Agent of a copy of said final award certified by the Tribunal Administrator of the American Arbitration Association and a certified copy of said judgment.

5. All fees payable to the Escrow Agent hereunder together with its reasonable costs, expenses and counsel fees, shall be deducted by the Escrow Agent from the Escrowed Cash at the end of each calendar month this Agreement is in effect. The fee which shall be paid to the Escrow Agent shall be calculated as set forth in Schedule A hereto. Upon the rendering of the final award in the Proceeding, the fee paid to the Escrow Agent shall become a taxable item against the losing party in the Proceeding.

6. The Escrow Agent shall not be liable for any

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error of judgment, or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except for its own wilful default or gross negligence. The Escrow Agent shall be under no duty, responsibility or obligation to make or to cause any person to make any inquiry or investigation as to the accuracy or adequacy, and shall be entitled to assume conclusively the correctness and completeness of any information contained in any certificate, statement or other document delivered to it pursuant to the provisions hereof and shall be protected in acting upon any notice, request, certificate, statement, affidavit or other paper believed by it to be genuine and to be signed by the proper party or parties.

7. Petitioners and Asiatic indemnify the Escrow Agent for, and hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part arising out of or in connection with the administration of the Escrow Agent's duties hereunder, including costs and expenses of defending itself against any claim or liability in the premises.

8. The Escrow Agent may consult with independent counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action

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taken, or omitted or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

9. Except as provided in paragraph 4(a) hereof, the Escrow Agent shall not be bound by any agreement or contract between the Petitioners and Asiatic (whether or not the Escrow Agent has knowledge thereof) and the Escrow Agent's only duties or responsibilities shall be to hold the Escrowed Cash and Escrowed Investment as Escrow Agent and to dispose of them in accordance with this Escrow Agreement.

10. The Escrow Agent (and any Successor Escrow Agent) may resign at any time by giving ten days' prior written notice of such resignation to Petitioners, Asiatic and their attorneys whose names are set forth in paragraph 14 hereof, such resignation to be effective on the date specified in such notice. If the position of Escrow Agent shall become vacant, Petitioners and Asiatic or their attorneys shall within ten days thereafter appoint a bank or trust company having its principal office in the Borough of Manhattan, City and State of New York, and having a combined capital and surplus stated in its most recent published financial statement as aggregating at least $500,000,000, as Successor Escrow Agent by a written instrument signed by Petitioners and Asiatic or their attorneys and delivered to such Successor Escrow Agent. If Petitioners or Asiatic

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or their attorneys fail to designate a Successor Escrow Agent within the ten-day period provided for herein, the selection of the party which has made such a designation shall be controlling. The Escrow Agent shall deliver to the Successor Escrow Agent, upon its appointment, any Escrowed Cash and the Escrowed Investment with a written statement of account and a copy of such statement shall be furnished to Petitioners and Asiatic and their attorneys. All of the terms and conditions of this Escrow Agreement shall apply to any Successor Escrow Agent.

11. All notices and other communications hereunder shall be in writing and shall be delivered or mailed by first class, registered or certified mail, postage prepaid, addressed:

(a) if to Petitioners:

Messrs. Eaton, VanWinkle & Greenspoon,
600 Third Avenue,
New York, N. Y. 10019.

Attention of Samuel Greenspoon, Esq.

and

New England Petroleum Corporation,
825 Third Avenue, N. Y. 10022.

Attention of Edward M. Carey, Esq.

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(b) if to Asiatic:

Messrs. Cravath, Swaine & Moore,
One Chase Manhattan Plaza,
New York, N. Y. 10005.

Attention of Ralph L. McAfee, Esq.

and

Asiatic Petroleum Corporation,
One Rockefeller Plaza (9th Floor),
New York, N. Y. 10020.

Attention of John M. Rochford, Esq.

(c) if to the Escrow Agent:

The Chase Manhattan Bank, N.A.,
1211 Avenue of the Americas, 33rd Floor,
New York, N. Y. 10015.

Attention of A. Angrisani, Esq.

(d) in such other manner as any party hereto may designate in a written notice to the others.

12. This Escrow Agreement shall terminate upon completion of the distribution of the Escrowed Cash and Escrowed Investment in accordance with the terms hereof.

13. Neither this Escrow Agreement nor any term or condition hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the parties. All the terms and conditions of this Escrow Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective suc-

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cessors and assigns of the parties hereto.

14. This Escrow Agreement shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective duly authorized officers as of the date first above written.

NEW ENGLAND PETROLEUM CORPORATION,

by _____

GRAND BAHAMA PETROLEUM COMPANY, LTD.,

by _____

ASIATIC PETROLEUM CORPORATION,

by _____

THE CHASE MANHATTAN BANK, N.A.,

by _____

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EXHIBIT A

Authorized Signatures of Attorneys

For Asiatic Petroleum Corp.,

Ralph L. McAfee

For New England Petroleum Corp.,
and Grand Bahama Petroleum Co.,
Ltd.,

Samuel Greenspoon

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S C H E D U L E A

The Fee to be paid to the Escrow Agent pursuant to paragraph 5 of this Escrow Agreement shall be as follows:

SNC (a) $600^{00}/_{100}$ per calendar year said Agreement is in effect; and

SNC (b) $45^{00}/_{100}$ per investment transaction.

EXHIBIT Q TO AFFIDAVIT OF
RICHARD deY. MANNING

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Commercial Arbitration Tribunal

In the Matter of the Arbitration between

NEW ENGLAND PETROLEUM CORPORATION And
GRAND BAHAMA PETROLEUM COMPANY LTD.

AND

ASIATIC PETROLEUM CORPORATION

CASE NUMBER: 1310-1385-74

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Arbitration Agreements entered into by the above-named Parties, and dated April 1, 1972, and having been duly sworn and having duly heard the proofs and allegations of the Parties, and the Parties having entered into a Stipulation dated January 7, 1975, consolidating the above matters into one proceeding, hereby FIND as follows:

S A. The termination by ASIATIC PETROLEUM CORPORATION, hereinafter referred to as RESPONDENT, of the Agreements dated April 1, 1972 between the Parties was not effective.

We therefore AWARD as follows:

1. RESPONDENT is directed to specifically perform the Agreements between the Parties as if there were no termination.

2. The price to be paid by NEW ENGLAND PETROLEUM CORPORATION And GRAND BAHAMA PETROLEUM COMPANY LTD., hereinafter referred to as CLAIMANTS, for the oil delivered in the calendar year 1975 pursuant to the Contracts dated on or about April 1, 1972 as amended, which are set forth as Exhibits A and B to the Stipulation of Fact, shall be the price set forth in paragraph 2 (c) of the Particular Conditions of Sale under such Contracts subject to the provisions of paragraph 7 of the General Conditions of Sale. S

3. The compensation of the Arbitrators totaling THIRTEEN THOUSAND DOLLARS ($13,000.00) shall be borne equally by the Parties.

4. The administrative fees of the American Arbitration Association totaling TEN THOUSAND TWO HUNDRED FIFTY DOLLARS ($10,250.00) shall be borne equally by the Parties. Therefore, RESPONDENT shall pay to CLAIMANTS the sum of FIVE THOUSAND DOLLARS ($5,000.00) for that portion of its share of said fees previously advanced by CLAIMANTS to the Association.

5. This AWARD is in full settlement of all claims submitted to this Arbitration.

STUART A. JACKSON

ARNOLD I. BURNS

BERNARD BRESSLER

Dated: October 22, 1975

Exh Q

EXHIBIT Q TO AFFIDAVIT OF
RICHARD deY. MANNING

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 23rd day of October, 1975, before me personally came and appeared STUART A. JACKSON, to me known and known to me to be the individual described in and who executed the foregoing instrument and he akcnowledged to me that he executed the same.

EDWARD M. RUBENSTEIN
Notary Public, State of New York
No. 03-4520972
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

Edward M. Rubenstein

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 23rd day of October, 1975, before me personally came and appeared ARNOLD I. BURNS, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Kathleen Barnett

KATHLEEN BARNETT
NOTARY PUBLIC, State of New York
No. 31-4502451
Qualified in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 23rd day of October, 1975, before me personally came and appeared BERNARD BRESSLER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

STEVEN H. [illegible]
Notary [illegible] New York
Qualified [illegible] County
Commission Expires March 30, 1976

BEST COPY AVAILABLE

EXHIBIT R TO AFFIDAVIT OF
RICHARD deY. MANNING

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse, Pearl and Centre Streets, New York, New York, on the 7 day of ~~December, 1975~~ January, 1976

Present:

Hon. Abraham J. Gellinoff,

Justice.

- x

In the Matter of the Application of New England Petroleum Corporation and Grand Bahama Petroleum Co., Limited,

Petitioners,

-against-

Asiatic Petroleum Corporation,

Respondent.

- x

MINUTE BOOK

Judgment

JAN 6 1976

Index No. 02706/75

CITY CLK. TRIAL JUSTICE ORDER BOOK

The petitioners having moved this Court for judgment pursuant to CPLR Secs. 7510 et seq. confirming the unanimous award of the arbitrators dated October 22, 1975 and to recover from respondent the sum of $5,000 (one-half of the administrative fee of the American Arbitration Association) as awarded by the arbitrators and the fees charged by the Chase Manhattan Bank N.A. for its services as escrowee pursuant to the escrow agreement between the parties.

Now, on reading and filing the notice of motion dated October 24, 1975, the affidavit of Samuel N. Greenspoon, sworn

Exh R.

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RICHARD deY. MANNING

to October 24, 1975, the award of the arbitrators dated October 22, 1975, and the escrow agreement dated April 23, 1975, in support of said motion; and no papers being submitted in opposition thereto, and said motion having duly come on to be heard and due deliberation having been had, and the memorandum decision of the Court having been rendered on November 3, 1975, it is

Ordered, that the unanimous award of the arbitrators dated October 22, 1975 and acknowledged on October 23, 1975 be and the same hereby is confirmed in all respects; and it is further

Adjudged, that the termination by Asiatic Petroleum Corporation of the agreements dated April 1, 1972 between the parties was not effective; and it is further

Adjudged, that the respondent Asiatic Petroleum Corporation is directed to specifically perform the agreements between the parties as if there were no termination; and it is further

Adjudged that the price to be paid by petitioners, New England Petroleum Corporation and Grand Bahama Petroleum Company Limited, for the oil delivered in the calendar year 1975, pursuant to the contracts dated on or about April 1, 1972, as amended, shall be the price set forth in paragraph 2(c) of the Particular Conditions of Sale under such contracts subject to the provisions of paragraph 7 of the General Conditions of Sale and it is further

Adjudged that the award is in full settlement of all claims submitted to the arbitration, and it is further

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RICHARD deY. MANNING

Adjudged, that the petitioner New England Petroleum Corporation of 825 Third Avenue, New York, New York, and the petitioner Grand Bahama Petroleum Co. Limited of Freeport, Bahamas do recover of the respondent, Atlantic Petroleum Corporation of One Rockefeller Plaza, New York, N.Y. the sum of $5,000 constituting one-half of the administrative fees of the American Arbitration Association as awarded by the arbitrators and the further sum of $2,715.00 constituting the fees charged by the Chase Manhattan Bank N.A., as escrow agent, pursuant to paragraph 5 of said escrow agreement, making a total of $7,715.00 and that petitioners have execution therefor.

Enter

J.S.C.

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ASIATIC PETROLEUM CORPORATION,	$	
Plaintiff	$	
VS.	$	CIVIL ACTION NO. 76-H-279
GRAND BAHAMA PETROLEUM COMPANY, LTD.,	$	(JURY DEMANDED)
Defendant	$	

COMPLAINT

MAY IT PLEASE THIS HONORABLE COURT:

ASIATIC PETROLEUM CORPORATION (hereinafter referred to as either "plaintiff" or "APC") hereby files its Complaint against GRAND BAHAMA PETROLEUM COMPANY, LTD. (hereinafter referred to as either "defendant" or "PETCO") and for causes of action will respectfully show this Court and Jury the following:

THE PARTIES

1. APC is a Delaware corporation authorized to do business in the State of New York and having its principal place of business at One Rockefeller Plaza, New York, New York.

2. PETCO is a foreign corporation with a principal place of business in the Mercantile Bank Building, Freeport, Grand Bahamas. PETCO is not presently licensed, and it was not licensed when the facts set forth herein occurred, to transact business in the State of Texas. Furthermore, PETCO has failed to designate or maintain a resident agent or place of regular business in the State of Texas, or a designated agent upon whom service may be had in the State of Texas. Notwithstanding the foregoing, PETCO has transacted business and is transacting business and is amenable to this Court's jurisdiction by virtue of engaging in business in this State under operation of law and

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pursuant to the provisions of Article 2031b, Texas Revised Civil Statutes, PETCO has appointed the Secretary of State of Texas as its agent upon whom service of process may be had.

JURISDICTION AND VENUE

3. Jurisdiction is founded on diversity of citizenship inasmuch as the amount in controversy exceeds the sum or value of Ten Thousand Dollars exclusive of interest and costs.

4. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(c). PETCO has conducted substantial business in the State of Texas and in the Southern District of Texas.

DEFINITIONS

5. A. "APC" shall mean the Delaware corporation known as Asiatic Petroleum Corporation and authorized to do business in the State of New York and having its principal place of business at One Rockefeller Plaza, New York, New York and shall include its predecessors, successors and assigns from April 1, 1972 to date of filing hereof;

B. "PETCO" shall mean the Grand Bahama company known as Grand Bahama Petroleum Company, Ltd. and authorized to do business in the Grand Bahamas and having its principal place of business in the Mercantile Bank Building, Freeport, Grand Bahamas and shall include its predecessors, successors and assigns from April 1, 1972 to date of filing hereof;

C. "Contract 72/530" shall mean the Sale of Oil Agreement made as of April 1, 1972, between APC and PETCO together with all amendments, letter agreements, acceptances, modifications and addendums thereto, a true copy of which is attached hereto as Exhibit A and which is incorporated herein by reference for all purposes;

D. "Unpaid Invoices" shall mean the three (3) invoices numbered CNJ 015, VNJ 014 and VNJ 016, respectively,

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which after allowing for all just credits and offsets, total $7,545,079.89, which invoices have previously been submitted to PETCO and are currently due and owing, true copies of which are attached hereto as Exhibits B, C and D and which are incorporated herein by reference for all purposes;

E. "The Arbitration" shall mean the proceeding styled "In the Matter of the Arbitration between New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd. and Asiatic Petroleum Corporation," Case No. 1310-1385-74;

F. "Contract to Purchase Oil" shall mean the agreement between APC and PETCO evidenced by the Arbitration Stipulation outlined on the record on April 18, 1975 in The Arbitration, the written agreement thereof dated April 28, 1975, a true copy of which is attached hereto as Exhibit E and which is incorporated herein by reference for all purposes;

G. "The Demand to Arbitrate" shall mean PETCO's demand for arbitration dated May 29, 1975, pursuant to Contract 72/530, as amended.

H. "Demand Letter" shall mean APC's letter to PETCO dated December 24, 1975 demanding, among other things, payment of the Unpaid Invoices, a true copy of which letter is attached hereto as Exhibit F and which is incorporated herein by reference for all purposes;

I. "Host Government Take" or "HGT" shall mean Venezuelan HGT as HGT is defined in Contract 72/530 and in the Contract to Purchase Oil.

COUNT ONE

1. On or about April 1, 1972, APC and PETCO entered into Contract 72/530 whereby APC agreed to sell and PETCO solemnly and contractually agreed to buy oil pursuant to the terms of said contract. The basic agreement, Exhibit A, was from time to time amended as is reflected by said exhibit.

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2. Certain disputes arose between APC and PETCO in connection with Contract 72/530 and certain of those disputes were submitted to arbitration.

3. After having been denied by the New York Supreme Court an injunction to prevent APC from terminating Contract 72/530 and from ceasing deliveries thereunder, PETCO sought APC's execution of the Contract to Purchase Oil (Exhibit E) to insure the continuous supply of oil to PETCO's utility customers and to avoid disruption in the supply of electricity by such utility customers to their customers. APC was induced by PETCO to enter into the Contract to Purchase Oil and executed such contract in good faith after the initiation of the Arbitration and after allegations by PETCO of Venezuelan HGT overcharges. A formal Demand for Arbitration of alleged Venezuelan HGT overcharges arising out of Contract 72/530 was served by PETCO on APC on May 29, 1975. Thereafter and pursuant to the Contract to Purchase Oil and not pursuant to Contract 72/530, APC made deliveries of oil to PETCO all in reliance upon PETCO's representations, acts and conduct, including its express undertaking to make payment for such oil within thirty days from invoice date. In reliance on PETCO's undertakings, acts, conduct and silence, APC made deliveries of oil and was paid for such oil at all times prior to the last three deliveries thereof on September 13, September 14 and September 17, 1975.

4. The Contract to Purchase Oil clearly defines the quality, quantity, price and payment terms relative to the oil contemplated to be delivered by APC to PETCO thereunder.

5. Paragraph 4 of the Contract to Purchase Oil calls for payment by PETCO to APC "not ~~less~~ later than thirty days from invoice date."

6. After solemnly contracting to purchase the fuel oil referred to in the Contract to Purchase Oil and after scheduling the deliveries of such oil and after receiving the invoices reflecting the delivery of such oil and after receiving the oil, PETCO has refused and continues to refuse to pay the

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invoices addressed to it for payment within thirty days, copies of which invoices are attached hereto as Exhibits B, C and D, which after allowing all just credits and offsets result in an unpaid balance currently owed by PETCO to APC in the aggregate total amount of $7,545,079.89 for goods had and received pursuant to the referenced contract.

7. The invoices sued upon are now and have been for some period of time delinquent. APC delivered to PETCO its Demand Letter demanding, among other things, payment of the Unpaid Invoices. Notwithstanding the demands of APC, PETCO, acting both alone and in concert, collusion and conspiracy with others yet unnamed and undetermined, has reneged on its contractual undertaking, has refused and continues to refuse to pay APC for the oil, the delivery of which is uncontested.

8. The decision and award in the Arbitration occurred and became final well after the deliveries of oil resulting in the Unpaid Invoices under the Contract to Purchase Oil. The Unpaid Invoices became due before the decision and the award in the Arbitration.

9. As a result of PETCO's as aforesaid breach of the Contract to Purchase Oil, it has become necessary for APC, in attempting to collect the account undeniably owed APC, to employ the undersigned counsel to file this suit and has contracted to pay reasonable attorneys' fees, which APC is entitled to recover from PETCO and for the recovery of which this suit is also brought.

Based upon the foregoing and upon hearing hereof, APC prays that this Honorable Court and Jury award it judgment against PETCO in the total sum of $7,545,079.89, together with interest thereon, reasonable attorneys' fees, all costs of suit and such other and further relief, both general and special, in law and in equity, to which APC may show itself justly entitled.

EXHIBIT S TO AFFIDAVIT OF
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COUNT TWO

Pleading as a separate and distinct cause of action against PETCO, and in addition to the cause of action alleged in Count One hereof, APC will show the Court and Jury as follows:

1. APC adopts and by this reference incorporates herein paragraphs 1-9 of Count One.

2. In complete disregard and in violation of the Contract to Purchase Oil and in violation of and disregard for the rights of APC, PETCO, acting both alone and in concert, collusion and conspiracy with others yet unnamed and undetermined, willfully and maliciously appropriated the fuel oil referred to in paragraphs 3 and 6 of Count One to its own use and benefit knowing full well at the time it received such oil that it had no intention of paying for the same.

3. By its actions and conduct, defendant PETCO, acting both alone and in concert, collusion and conspiracy with others yet unnamed and undetermined, maliciously and in wanton disregard of the rights of APC, unlawfully converted the property of APC and has retained all income derived from the use of the oil maliciously and wantonly converted to its own use by PETCO and has totally failed to account to APC for its wanton, reckless and irresponsible disregard for the rights of APC.

4. As a result of PETCO's actions as aforesaid, it has become necessary for APC, in attempting to collect the account undeniably owed APC, to employ the undersigned counsel to file this suit and has contracted to pay reasonable attorneys' fees, which APC is entitled to recover from PETCO and for the recovery of which this suit is also brought.

Based upon the foregoing and upon hearing hereof, APC prays that this Honorable Court and Jury award it judgment against PETCO for actual damages in the total sum of $7,545,079.89, and by virtue of PETCO's illegal fraudulent acts, punitive damages

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in the amount of $7,545,079.89, together with interest thereon, reasonable attorneys' fees, all costs of suit and such other and further relief, both general and special, in law and in equity, to which APC may show itself justly entitled.

COUNT THREE

Pleading a separate and distinct cause of action against PETCO and in addition to the causes of action alleged in Counts One and Two hereof, APC will show the Court and Jury as follows:

1. APC adopts and by this reference incorporates herein paragraphs 1-9 of Count One.

2. APC adopts and by this reference incorporates herein paragraphs 2-4 of Count Two.

3. Acting by and through its parent company, New England Petroleum Corporation ("NEPCO"), there was filed on behalf of both NEPCO and PETCO on October 9, 1975, an Application for Exception with the Federal Energy Administration ("FEA"). In its Decision and Order in Case No. FEE-1963 dated November 17, 1975 ("FEA Decision"), the FEA noted NEPCO's claims of "financial difficulties" being experienced by NEPCO and PETCO and that their "financial position has deteriorated" (FEA Decision, pp. 4 and 5). The FEA received the consolidated balance sheet and determined with respect to PETCO and related companies that their "continued existence is in very serious jeopardy" (FEA Decision, p. 5).

4. PETCO received and paid for fourteen (14) deliveries of oil made prior to September 13 and was silent concerning any claim of right to withhold payment by reason of its claims of Venezuelan HGT overcharges, which claims, if any, are now subject to arbitration pursuant to the Demand for Arbitration arising out of Contract 72/530 and do not relate to the Contract to Purchase Oil.

5. PETCO established a course of conduct under and pursuant to the Contract to Purchase Oil and had, until the

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last three shipments thereunder, paid for oil delivered to it before the decision and the award in the Arbitration. The Unpaid Invoices became due and payable before the decision and award in the Arbitration.

6. APC justifiably relied on the Contract to Purchase Oil and the unconditional undertaking by PETCO to pay for oil delivered pursuant to such contract.

7. PETCO knew or should have known that APC would not have delivered the last three shipments of oil if there existed the remotest possibility that PETCO intended not to pay for such oil.

8. PETCO knew or reasonably should have known that had APC known of PETCO's intention to withhold payments after institution of the Arbitration and after the Demand for Arbitration, APC never would have been lulled by PETCO's acts, conduct and omissions into executing the Contract to Purchase Oil and delivering oil to PETCO thereunder.

9. PETCO's action in wtihholding payment to APC was motivated by its adverse financial condition and does not result from any bona fide dispute with APC. PETCO fabricated an "excuse" to withhold monies rightfully due APC in order to strengthen its unstable financial situation.

10. At no time prior to PETCO's sudden and unannounced nonpayment of the last three (3) invoices did PETCO make any claim of right to offset arising out of the Contract to Purchase Oil. To the contrary, PETCO remained silent and received oil for its own use and benefit. PETCO was asserting "overcharges" but was not asserting offset as a result of claimed overcharges at the time it induced APC to enter into and execute the Contract to Purchase Oil. PETCO's position in this regard is totally unsupportable and unjustified as it was well aware of whatever alleged rights it might have contended were PETCO's when it voluntarily sought and induced the execution of the Contract to

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Purchase Oil. By its actions, PETCO is estopped to assert any purported right of offset.

11. As a result of PETCO's actions as aforesaid, it has become necessary for APC, in attempting to collect the account undeniably owed APC, to employ the undersigned counsel to file this suit and has contracted to pay reasonable attorneys' fees, which APC is entitled to recover from PETCO and for the recovery of which this suit is also brought.

Based upon the foregoing, APC has no adequate remedy at law for the wrongs complained of herein and will suffer irreparable harm unless (1) PETCO is compelled to make immediate payment to APC as prayed for herein (as a condition to such payment, APC is prepared to provide adequate security pending a final determination of liability herein); or (2) alternatively, PETCO is ~~should be~~ compelled to make payment into the Registry of this Court in an amount sufficient to satisfy any judgment entered herein in favor of APC; or (3) in the further alternative, PETCO is ~~should be~~ compelled to provide a bond satisfactory to this Court in an amount sufficient to insure that APC has an adequate remedy at law and will recover from PETCO the full amount of any judgment entered herein in favor of APC.

WHEREFORE, premises considered, APC respectfully prays that upon final hearing of this case, this Honorable Court enter judgment as prayed for in connection with each of the counts and causes of action stated herein and grant APC such other and further relief, general and special, in law and in equity, to which it may show itself justly entitled.

JURY DEMAND

APC respectfully requests that this cause be heard before a jury.

Thomas R. McDade, Attorney in Charge for Plaintiff

Bank of the Southwest Building
Houston, Texas 77002 224-7070

Of Counsel:

FULBRIGHT & JAWORSKI

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
252-2244

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date May 3, 1973

Grand Bahama Petroleum Company Limited
P.O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 2

This is to confirm that with effect from March 13, 1973, the price specified in Clause 2(c) of the above-mentioned contract, as amended, shall be deemed to be further amended as follows:

PRODUCE	PRICE
No. 6 - 2.8% S.	$2.1805/bbl.

This increase in price is due to new Fiscal Export Prices (F.E.P.s) which replace those in effect as from January 1, 1973.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

Would you kindly indicate your acceptance by signing and returning the duplicate original to us at your earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: /s/ R.J. Paulli

R. J. Paulli, Vice President

ACCEPTED AND AGREED TO:
GRAND BAHAMA PETROLEUM COMPANY LIMITED

/s/ T.C. Covert

EXHIBIT S TO AFFIDAVIT OF RICHARD deY, MANNING

Asiatic Petroleum Corporation

Telephone
262-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date May 4, 1973

Grand Bahamas Petroleum Company Limited
P. O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 3

This is to confirm that with effect from April 1, 1973, the price specified in Clause 2(c) of the above-mentioned contract, as amended, shall be further increased by $0.0779 per barrel to the following:

PRODUCT	PRICE
No. 6 - 2.8% S.	$2.2584/bbl.

This increase in price is due to the F.E.P. Freight Adjustment as announced by the Venezuelan Government for the second quarter 1973.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

Would you kindly indicate your acceptance by signing and returning the duplicate original to us at your earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M. J. Paulli

M. J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM COMPANY LIMITED

_____

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
262 2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref

Your Ref

Date July 10, 1973

Grand Bahama Petroleum Company Limited
P.O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 4

This is to confirm that with effect from July 1, 1973, the price specified in Clause 2(c) of the above-mentioned contract, as amended, shall be further increased by $0.1319 per barrel to the following:

PRODUCT	PRICE
No. 6 - 2.8% S.	$2.3903/bbl.

This increase in price is due to the F.E.P. Freight Adjustment as announced by the Venezuelan Government for the third quarter 1973.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

Would you kindly indicate your acceptance by signing and returning the duplicate original to us at your earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M.J. Paulli

M.J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMA PETROLEUM COMPANY LIMITED

_____

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone:
262-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date September 4, 1973

Grand Bahamas Petroleum Company Limited
P. O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 5

This is to confirm that with effect from August 1, 1973, the price specified in Clause 2(c) of the above-mentioned contract, as amended, shall be further amended to the following:

PRODUCT	PRICE
No. 6 - 2.8% S.	$2.5981/bbl.

This increase in price is due to new Fiscal Export Prices as announced by the Venezuelan Government and also includes Freight Premium Adjustment for the third quarter 1973.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

Would you kindly indicate your acceptance of this amendment by signing and returning the duplicate original to us at your earliest convenience.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M.J. Paulli

M.J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM COMPANY LIMITED

_____

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
262-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date November 13, 1973

Grand Bahamas Petroleum Co., Ltd.
P.O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Gentlemen:

CONTRACT ASC 72/530 - AMENDMENT NO. 6

This is to confirm our agreement whereby, with effect from the respective dates mentioned below, the prices for the Oil under the above-mentioned contract, as amended, (the "Contract") shall be as follows:

F.O.B. PRICES AS FROM SEPTEMBER 1, 1973

GRADES	PRICES
No. 6 - 2.8% S. (300 Visc.)	$2.6839/bbl.
No. 6 - 2.8% S.	$2.6839/bbl.

F.O.B. PRICES AS FROM OCTOBER 1, 1973

No. 6 - 2.8% S. (300 Visc.)	$2.9698/bbl.
No. 6 - 2.8% S.	$2.9698/bbl.

and that Clause 2(c), Particular Conditions of Sale, of the Contract shall be deemed to have been amended accordingly.

The above prices result from increases in the Venezuelan Host Government Take and Fourth Quarter Freight Premium and have been determined and agreed in accordance with the provisions of the Contract.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Would you please confirm your acceptance of this amendment by signing and returning the duplicate original to us at your earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: H. J. Paulli

H.J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM CO., LTD.

By: _____

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
262 2244
(Area Code 212)

[illegible] N.Y. 10020

Our Ref.
Your Ref.
Date January 2, 1974

Grand Bahamas Petroleum Co., Ltd.
P. O. Box F2521
Mercantile Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 7

This is to confirm our agreement whereby, with effect from the respective dates mentioned below, the prices for the Oil under the above-mentioned contract, as amendad, (the "Contract") shall be as follows:

F.O.B. PRICE AS FROM NOVEMBER 1, 1973

GRADE	PRICE
No. 6 - 2.8% S.	$4.5263/bbl.

F.O.B. PRICE AS FROM DECEMBER 1, 1973

No. 6 - 2.8% S.	$4.6397/bbl.

and that Clause 2(c), Particular Conditions of Sale, of the Contract shall be deemed to have been amended accordingly.

The above prices result from increases in the Venezuelan Host Government Take and have been determined and agreed in accordance with the provisions of the Contract, as amended.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

If you are in agreement with this amendment, kindly sign and return the duplicate original to us at the earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M.J. Paulli

M.J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM CO., LTD.

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
582 2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date February 11, 1974

Grand Bahamas Petroleum Company Limited
P.O. Box F2521
International Credit Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 (AS AMENDED)
AMENDMENT NO. 8

This is to confirm our agreement whereby, with effect from January 1, 1974, the price for the oil supplied under the above-mentioned contract shall be amended as follows:

GRADE	PRICE
No. 6 - 2.8% S. - 300 Visc.	$8.2639/bbl.
No. 6 - 2.8% S.	$8.2639/bbl.

The above price results from Venezuelan Host Government Take and First Quarter Freight Premium and has been determined in accordance with the provisions of the above-mentioned contract.

Except as specifically amended herein, all terms and conditions of Contract ASC 72/530 (as amended) shall continue in full force and effect.

We trust that the above clearly sets out the terms agreed upon and we would appreciate your signifying your acceptance by signing the enclosed duplicate of this letter and returning it to us at your earliest convenience.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M.J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM COMPANY LIMITED

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
262 2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date March 6, 1974

Grand Bahamas Petroleum Company Limited
P.O. Box F2521
International Credit Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 72/530 - AMENDMENT NO. 9

This is to confirm that with effect from February 12, 1974 the price for the oil supplied under the above-mentioned contract shall be increased as follows:

GRADES	PRICES/BBL.
No. 6 - 2.8% S. 300 Visc.	$8.7009
No. 6 - 2.8% S.	$8.7009

The above price increases are due to increases in Royalty or Exploitation Tax and have been determined in accordance with the provisions of the contract.

The increase in the Royalty or Exploitation Tax is effective as from January 1, 1974; however, we are provisionally increasing the contract prices to you only as from February 12, 1974.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

EXHIBIT S TO AFFIDAVIT OF RICHARD deY. MANNING

Grand Bahamas Petroleum Company Limited March 6, 1974

If you are in agreement with this amendment, kindly sign and return the duplicate original to us at the earliest opportunity.

Yours very truly,

ASIATIC PETROLEUM CORPORATION

By: M. J. Paulli

M. J. Paulli, Vice President

ACCEPTED AND AGREED TO:

GRAND BAHAMAS PETROLEUM COMPANY LIMITED

EXHIBIT C TO AFFIDAVIT OF RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone
252-2244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Our Ref.

Your Ref.

Date December 2, 1974

Grand Bahama Petroleum Co., Ltd.
P.O. Box F2521
International Credit Bank Building
Freeport, Bahamas

Dear Sirs:

CONTRACT ASC 75/530 - AMENDMENT NO. 10

This is to confirm that effective as from October 1, 1974, the price for the oil supplied under the above-mentioned contract shall be as follows:

GRADE	PRICES/BBL.
No. 6 - 2.9% S. (300 Visc.	$9.0344

This price results from an increast in Host Government Take and has been determined in accordance wi-h the provisions of the contract.

Except as specifically amended or modified hereby, all terms and conditions of Contract ASC 72/530, as amended, shall continue in full force and effect.

If You are in agreement with this amendment, kindly sign and return the duplicate of this amendment to us at the earliest opportunity.

Very truly yours,

ASIATIC PETROLEUM CORPORATION

By:

M.S. Paulli, Vice President

ACCEPTED AND AGREED TO:
GRAND BAHAMA PETROLEUM CO., LTD.

By:_____

113a

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

AC 261 REV 1 '66

ONE ROCKEFELLER PLAZA, NEW YORK, N.Y. 10020

VESSEL NAME	LOADING DATE	LOADING PORT	INVOICE NUMBER
NEPCO ADVANCE	SEPT. 14, 1975	CURACAO 85	CNJ 015
INVOICE DATE / **ARRIVAL DATE**	**DISCHARGE DATE**	**DISCHARGE PORT**	SEE ARBITRATIO STIPULATION
SEPT. 17, 1975		FREEPORT	

SOLD TO

GRAND BAHAMAS PETROLEUM CO. LTD.
P.O. BOX F 2521
MERCANTILE BANK BUILDING
FREEPORT, BAHAMAS

TERMS: NET CASH TO BE RECEIVED NOT LATER THAN 30 DAYS FROM DATE OF INVOICE.
F.O.B. LOADING PORT
DUE ON OR BEFORE OCT. 17 1975

ATTACHMENTS: 11/1/75

ACCOUNT CODE
125-692-620
G-8

PRODUCT	QUANTITY IN (BARRELS)	UNIT PRICE $	AMOUNT $
FUEL OIL API 12.2 55839 (E. TONS (51,589.00))	335,360	9.2537	3,103,320.83

LT: 11/7/75

PLEASE MENTION INVOICE NUMBER WHEN REMITTING

114a

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

AC 132 REV 3/75

Asiatic Petroleum Corporation
One Rockefeller Plaza, New York, N.Y. 10020

VESSEL NAME	LOADING DATE	LOADING PORT	INVOICE NUMBER
SALIT	SEPT. 17, 1975	Cardon - 87	MIDIH
INVOICE DATE / **ARRIVAL DATE**	**DISCHARGE DATE**	**DISCHARGE PORT**	**CONTRACT NO.**
SEPT. 23, 1975		USNH 75/512.	"PER ARBITRAT. STIPULATION"

SOLD TO:

GRAND BAHAMAS PETROLEUM CO. LTD.
P.O. BOX F2521
MERCANTILE BANK BUILDING
FREEPORT, BAHAMAS

TERMS:
NET CASH TO BE RECEIVED NOT LATER THAN 30 DAYS FROM DATE OF INVOICE AT FOB LOADING PORT
ATTACHMENT ON OR BEFORE OCT. 23, 1975. ESDE
(11/7/75)
G-0

PRODUCT	QUANTITY IN (BARRELS)	UNIT PRICE $	AMOUNT $
FUEL OIL API 12.7 (E.TONS 24,820.20)	161,980	9.2537	1,498,914.33
55842			

HT:jj
9/24/75

PLEASE MENTION INVOICE NUMBER WHEN REMITTING

TAX | DISTRICT

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

COMPANIA SHELL DE VENEZUELA LTD. | Asiatic Petroleum Corporation
One Rockefeller Plaza, New York, N. Y. 10020

14
10424

AC 132 REV 3/75

VESSEL NAME	LOADING DATE	LOADING PORT	INVOICE NUMBER
NEPCO ENERGY	CARDO SEPT. 13, 75	CARDON 87	VHJ 016
INVOICE DATE / **ARRIVAL DATE**	**DISCHARGE DATE**	**DISCHARGE PORT**	**CONTRACT NO.**
SEPT. 24, 1975		USHH 75/512	"PER ARBITRATION"

SOLD TO:

GRAND BAHAMAS PETROLEUM CO. LTD.
P.O. BOX F2521
MERCANTILE BANK BUILDING
FREEPORT, BAHAMAS

TERMS: NET CASH TO BE RECEIVED NOT LATER THAN 30 DAYS FROM DATE OF INVOICE
F.O.B. LOADING PORT
DUE ON OR BEFORE OCT. 24, 1975

ATTACHMENTS: 11/8/75

C-8

PRODUCT	QUANTITY IN (BARRELS)	UNIT PRICE $	AMOUNT $
FUEL OIL API 12.2 55844 (E. TONS 49,473.20)	321,756	9.1462	2,942,844.73

Completed

HT:jj
9/26/75

PLEASE MENTION INVOICE NUMBER WHEN REMITTING

GROUP ACCOUNTS DATA	TAX	PRODUCT

115a

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

New England Petroleum Corporation &
Asiatic Petroleum Corporation;
Grand Bahama Petroleum Co. Ltd. and
Asiatic Petroleum Corporation --
No. 1310-1385-74

This will reduce to writing the agreement between our respective clients outlined on the record in this proceeding on April 18, 1975, modifying the agreement entered by stipulation on February 28, 1975.

New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd. ("Petitioners") and Asiatic Petroleum Corporation ("Asiatic") have agreed as follows:

1. Asiatic will supply, at a rate of from 63,000 to 77,000 barrels per day, No. 6 high sulfur fuel oil ("oil") and petitioners will lift and purchase such quantities of oil during the pendency of the above arbitration proceeding.

2. Petitioners will pay to Asiatic the price of $2.35 per barrel F.O.B. Caribbean plus all HGT which has become effective since April 1, 1972, and which may become effective after the date hereof and up to the date of a final judgment confirming the award of the Arbitrators (without petitioners conceding that the amount of HGT heretofore charged or claimed by Asiatic is correct).

3. In addition, Petitioners will deposit in an escrow account at The Chase Manhattan Bank, N.A., the sum of $.84 per barrel of oil lifted and purchased by petitioners hereunder and those sums will be distributed to the parties in

accordance with paragraph 4 of the Escrow Agreement dated April 25, 1975, between the parties hereto and said Bank.

4. Deposits to said escrow account shall be made whenever the price for oil is payable to Asiatic but not later than 30 days from the invoice date, which invoice shall also be payable on the same date.

5. Commencing immediately, petitioners will furnish weekly to Asiatic in writing a running 30-day lifting program showing estimated dates and volumes for which nominations will be made hereunder.

6. Each nomination by petitioners hereunder shall be made in writing and shall be given not less than 7 days in advance of the expected loading date for each such vessel; Asiatic may, for any good business reason, reject in writing any such nomination within 48 hours after receipt, in which event it shall notify petitioners of the earliest alternative date for which a nomination can be made.

7. In the event that petitioners nominate a vessel less than 7 days in advance of the expected loading date and Asiatic agrees to load such vessel as an accommodation to etitioners, any delay to the vessel (a) while awaiting berth or (b) while in berth due to the fault of the vessel, shall be for petitioners' account.

8. For each calendar month beginning May 1975, petitioners shall nominate vessels to lift oil in accordance with paragraphs 5-7 above and shall lift and purchase hereunder a number of barrels of oil not less than 63,000 multiplied by the number of days in each such calendar month.

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

9. Commencing on the date of entry of a final judgment confirming the award of the Arbitrators herein petitioners shall lift and purchase any underlifted oil as follows:

(a) The amount of underlifted oil shall be determined by multiplying the number of days between March 2, 1975, and the date of such final judgment by 63,000 and subtracting from the result the total number of barrels lifted and purchased by petitioners hereunder on and prior to the date of such final judgment.

(b) Petitioners shall have 30 days or a number of days equal to the number of barrels of underlifted oil divided by 77,000, whichever is longer, to lift and purchase the total number of barrels of underlifted oil as calculated under paragraph 9(a) hereof. Paragraphs 5-7 above shall apply to such purchases.

(c) The price to be paid by petitioners for such underlifted oil shall be the price determined by the Arbitrators in their award and the judgment entered thereon to be applicable to oil lifted and purchased pursuant to this agreement. In addition, any increase or decrease in HGT on or after the date of the award of the Arbitrators shall apply to any underlifted oil which petitioners are required to lift and purchase under this paragraph 9 on or after the effective date of such change in HGT.

(d) The price for oil lifted and purchased pursuant to this paragraph 9 shall be paid to Asiatic within 30 days from the date of invoice.

BEST COPY AVAILABLE

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

10. For purposes of this agreement HGT shall have the same definition as set forth in Contract No. ASC 72/527 dated as of April 1, 1972, between New England Petroleum Corp. and Asiatic (without petitioners conceding that said contract was terminated effective March 2, 1975).

11. In the event that either petitioners or Asiatic fail to comply with any term or condition of this agreement the parties agree that any claim for damages or other relief by the other party may be submitted to the Panel of Arbitrators in this proceeding (which may include one or more successor arbitrators appointed pursuant to the Rules of the American Arbitration Association, should any member of the present Panel be unable to serve). Said Arbitrators shall have jurisdiction to hear and determine such claim and may render an award for damages, if any, together with interest and the fees and expenses of the Arbitrators and other taxable costs and disbursements relating to such proceeding.

Attorney for New England Petroleum Corporation and Grand Bahama Petroleum Company, Ltd.

Attorney for Asiatic Petroleum Corporation

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

Asiatic Petroleum Corporation

Telephone:
262-3244
(Area Code 212)

One Rockefeller Plaza, New York, N.Y. 10020

Certified Mail, Return Receipt Requested

Our Ref.
Your Ref.
Date December 24, 1975

Grand Bahama Petroleum Company Limited
P. O. Box F2521
Mercantil Bank Bldg.
Freeport, Bahamas

Gentlemen:

Re: Asiatic Petroleum Corporation ("APC") Agreement with Grand Bahama Petroleum Company Limited ("PETCO") Evidenced by the Arbitration Stipulation Outlined on the Record in the Matter of the Arbitration Between New England Petroleum Corporation and Grand Bahama Petroleum Company Limited and Asiatic Petroleum Corporation, Case No. 1310-1385-74 (the "Arbitration") on April 18, 1975 and the Written Agreement Thereof Dated April 28, 1975 (the "Contract to Purchase Oil")

By your letter of November 3, 1975, you terminated your contract with APC, commonly referred to as "ASC 72/530," in reliance upon and pursuant to Clause 7(A) of the General Conditions of Sale thereof. By our letter dated November 5, 1975, we responded to yours of November 3. We did not agree to your request for an extension of time and accordingly your notice of termination remained in force and effect. For your ready convenience, we are attaching hereto true copies of that exchange of correspondence.

The captioned Contract to Purchase Oil clearly defines the quantity, quality, price and payment terms relative to the oil contemplated to be delivered by APC to PETCO thereunder. We are attaching hereto a copy of the Contract to Purchase Oil and should like to call your particular attention to paragraph no. 4 thereof, which calls for payment "not later than 30 days from the invoice date." After solemnly contracting

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

to purchase the fuel oil referred to in the Contract to Purchase Oil and after scheduling the deliveries of such oil and after receiving the invoices reflecting the delivery of such oil and after receiving the oil, you have refused and continue to refuse to pay the invoices addressed to you, copies of which are attached hereto, which after allowing all just credits and offsets result in an unpaid balance owed by PETCO to APC in the aggregate total amount of $7,545,079.89 for goods had and received pursuant to the referenced contract.

APC was induced by you to enter into the Contract to Purchase Oil and executed such contract in good faith after the initiation of the first Arbitration and after allegations by you of Venezuelan HGT overcharges. The formal Demand for Arbitration of the alleged Venezuelan HGT overcharges was served on us by you on May 29, 1975. APC, relying upon your representations, acts and conduct, including your silence, made deliveries of oil and was paid for such oil at all times prior to the last three (3) deliveries thereof on September 13, September 14 and September 17, 1975. You sought our execution of the Contract to Purchase Oil to insure the continuous supply of oil to your utility customers with whom you had long-term contracts and to avoid disruption of their customer service. Indeed, there was no cessation of supply, and your customers did not suffer.

However, interestingly, and in timing too close to be mere coincidence to your abrupt and unexplained non-payment for the last three (3) deliveries, which payments were due October 13, October 14 and October 17, 1975, New England Petroleum Corporation filed an Application for Exception with the Federal Energy Administration ("FEA") on October 9, 1975. In its Decision and Order in Case Number FEE-1963 dated November 17, 1975 ("FEA Decision"), the FEA noted New England Petroleum Corporation's claims of

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

"financial difficulties" being experienced by it and other subsidiaries of Carey Energy Corporation, including yourselves, and that their "financial position has deteriorated" (FEA Decision, pps. 4 and 5). The FEA received the consolidated balance sheet and determined with respect to you and these companies that their "continued existence is in very serious jeopardy" (FEA Decision, p. 5).

Based upon the fact of your receipt of and payment for fourteen (14) deliveries of oil made prior to September 13, your silence concerning any claim of right to withhold payment by reason of your claims of Venezuelan HGT overcharges and your knowledge that we would not have delivered oil if there existed the remotest possibility you intended not to pay for such oil, it is beyond argument that your action of withholding payment to us was motivated by your adverse financial condition and does not result from a bona fide dispute with APC. The fact is you fabricated an "excuse" to withhold monies rightfully due us in order to strengthen your unstable financial situation.

Had APC known of your intention to withhold payments after institution of the first Arbitration it never would have been lulled by your acts, conduct and omissions into executing the Contract to Purchase Oil. At no time prior to your sudden and unannounced non-payment of the last three (3) invoices did you make any claim of right to offset what you assert to be overcharges arising out of computations of Venezuelan HGT relative to the oil delivered. To the contrary, you remained silent and received the oil for your own use and benefit. You were asserting "overcharges" but not asserting offset and induced us to enter into the Contract to Purchase Oil. Your new position is totally unjustified as you were well aware of whatever rights you might have contended were yours when you voluntarily

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

sought the execution of the Contract to Purchase Oil. By your actions you are estopped to assert any purported right of offset; additionally, you effectively waived any such right to offset upon execution of the Contract to Purchase Oil.

You are well aware the indebtedness referred to herein is due, owing and unpaid and represents purchases of oil by you from APC. You are further well aware of the payment terms set out in the Contract to Purchase Oil. Your account with APC is and has for sometime been delinquent. To date, our attempts to collect the sum which is undeniably due and owing have been unsuccessful. Your failure to respond to APC in this regard leads us to the conclusion that you do not intend to honor your substantial obligation in this matter and instead intend to renege.

In order to avoid the time and expense necessarily incident to court proceedings, this letter is being sent to you in advance of taking action on the foregoing breaches of contract.

We hereby make demand upon you for immediate payment of the outstanding invoices in the aggregate principal amount of $7,545,079.89 and for your timely completion of performance of your other obligations under the Contract to Purchase Oil.

If you wish to dispose of this matter amicably, you or your attorneys must contact us within the next ten days. Your failure to contact us can only be construed as further evidence of your willful, capricious, arbitrary and unreasonable withholding of monies which properly belong to APC. We shall construe the continued withholding of these monies to be not only in breach of your contract with us but an appropriation to your own use and benefit of money (property) that properly belongs to us, which, if true, we are informed constitutes conversion.

EXHIBIT S TO AFFIDAVIT OF
RICHARD deY. MANNING

We have received your Demand for Arbitration by which you contend in substance that price increases for the oil sold pursuant to ASC 72/530 were not authorized, presumably pursuant to Clause 7(A) of the General Conditions of Sale and Clause 2(d) of the Particular Conditions of Sale, both of which relate to Host Government Take (HGT); however, that dispute, if any, relates to ASC 72/530 and not to the Contract to Purchase Oil which is the subject of this correspondence and which does not by its terms compel arbitration. Instead, arbitration is only permitted if the parties are mutually agreeable to that procedure.

You may be sure that in the event we do not receive payment as demanded hereby, legal proceedings will follow immediately upon the expiration of the ten-day period allowed herein and will not be limited to simply an action for payment of the unpaid invoices totalling $7,545,079.89, but also for breach of contract if you should fail to fulfill your other obligations under the Contract to Purchase Oil and, if the facts justify, an action sounding in tort for conversion and for conspiracy to induce the breach of a contract (which conspiracy was engaged in by PETCO and others including, but not limited to Carey Energy Corporation, New England Petroleum Corporation or Mr. Edward M. Carey). It is our intention to pursue those theories and the appropriate remedies relating to each of them, including not only actual but punitive damages flowing from PETCO's involvement in such conduct. Should legal action be necessary, we will demand that you pay not only the amount aforesaid, but also court costs, attorneys' fees and interest, together with any punitive damages and other relief to which we are justly entitled.

Very truly yours,

J. D. Ritchie
President

Attachments
cc: Grand Bahama Petroleum Company Limited
c/o Carey Energy Corporation
825 Third Avenue, New York, NY 10022

BEST COPY AVAILABLE

ORDER TO SHOW CAUSE WITH A STAY DATED MARCH 1, 1976

United States District Court
Southern District of New York
----------X

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

--against--

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Order To Show Cause WITH A STAY

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

----------X

Upon the annexed affidavit of Jonathan S. Gaynin, sworn to March 1, 1976, and the exhibits annexed thereto, and the notice of taking deposition served on March 1, 1976, it is

Ordered that the respondent, Asiatic Petroleum Corporation, show cause before this Court, at a Term for Motions, to be held before Hon. Charles E. Stewart, Jr., one of the Judges of this Court, in Courtroom No. 705, of the United States Courthouse, Foley Square, New York, New York, at 9:30 A.M. on March 4, 1976, why a protective order should not be made and entered herein, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, vacating and quashing respondent's notice of taking deposition of petitioner and request for production of documents served on March 1, 1976; and why petitioner should not have such other and further relief as to the Court may seem just and proper; and it is further

CES

ORDER TO SHOW CAUSE WITH A STAY DATED MARCH 1, 1976

Ordered, that pending the hearing and determination of this motion and the entry of an order thereon, all depositions and production of documents, including such depositions and document production sought by respondent's notice of taking deposition served on March 1, 1976, are stayed; and it is further

CES

Ordered, that sufficient cause appearing therefo let/PERSONAL service of a copy of this order and the papers upon which it is made, upon the respondent, on or before ~~5:00~~ 6:00 P.M. on March / , 1976, be deemed good and sufficient service and notice hereof.

CES

Dated: New York, N.Y.
March / , 1976.

ISSUED 5:00 P.M.

/s/ Charles E. Stewart, J.
United States District Court Judge

AFFIDAVIT OF JONATHAN S. GAYNIN IN SUPPORT OF ORDER TO SHOW CAUSE DATED MARCH 1, 1976

United States District Court
Southern District of New York

----------X

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

--against--

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Affidavit

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

----------X

State of New York)
ss:
County of New York)

Jonathan S. Gaynin, being duly sworn, deposes and says:

I am an attorney-at-law, admitted to the Bar of this Court and associated with Eaton, Van Winkle & Greenspoon, attorneys for petitioner, Grand Bahama Petroleum Company, Limited.

I am familiar with the facts set forth herein.

I make this affidavit in support of petitioner's motion to vacate and quash respondent's notice of taking deposition and request for production of documents. The notice of taking deposition and request for production of documents should be vacated and quashed because:

1. the notice of taking depositions is improper and without reasonable notice; and

2. the depositions sought are unnecessary, as there is nothing to examine or produce since the sole issue before this Court is based upon the effect of 9 U.S.C.A. Section 4 and whether respondent has failed to comply with a written agreement providing for arbitration.

Respondent's notice is insufficient and unreasonable.

At approximately 12:35 P.M. this afternoon, petitioner was served by respondent with a notice of taking deposition of petitioner by Thomas C. Covert commencing at 9:00 A.M. (a copy of said motion is annexed hereto as Exhibit "A"). The respondent's notice has not even given petitioner a day's notice.

Petitioner is a Bahamian corporation with offices in Freeport, Grand Bahama. Respondent's notice of taking deposition seeks the deposition of Thomas E. Covert to begin at 9:00 A.M. tomorrow morning. Mr. Covert resides and works for petitioner in Freeport, Grand Bahama.

The notice of taking deposition has attached to it a lengthy request for the production of documents. The request would require Mr. Covert to produce tomorrow morning a voluminous number of documents, none of which are related to this proceeding. Respondent's notice is patently improper and unreasonable.

Rule 30(a) of the Federal Rules of Civil Procedure require reasonable notice. Reasonable notice has been interpreted by the Federal Courts as requiring at least five days notice, plus one additional day for each 300 miles of travel. See 4A Moore's Federal Practice, §30.57[3] p. 30-81. I believe that Freeport, Grand Bahama is at least 900 miles from this Court and respondent's office, the place where the examination is noticed to be taken.

The examinations are unnecessary.

Furthermore, Mr. Covert's examination as well as the other examinations sought is totally unnecessary and merely an attempt to harrass, annoy and oppress petitioner. There is absolutely no reason for Mr. Covert or Mr. Edward M. Carey, the other witness, to be examined in this proceeding. The sole issue before this Court is the applicability of Section 4 of Article 9 of the United States Code (9 U.S.C.A. Sec. 4), and whether the arbitration clause of a written agreement has been violated by respondent. Petitioner's proceeding in this Court is to compel respondent to proceed to arbitration. The sole question here is whether respondent has refused to arbitrate even though it is required to do so.

Neither the testimony of the witnesses noticed nor the documents sought are relevant, material or would lead to evidence on the issues before this Court. Indeed,

the so-called "Contract to Purchase Oil", the subject of respondent's action pending in the United States District Court for the Southern District of Texas, was reached by counsel for the parties during the arbitration proceeding and the contract is set forth in the arbitration minutes and in writing. Neither witness sought to be deposed by respondent have particular knowledge with respect to the validity and enforceability of an arbitration clause contained in that agreement or otherwise during the pendency of the arbitration proceeding held previously.

Moreover, the request for production of documents would require petitioner to produce thousands of documents, none of which pertain to the proceeding or the issues raised herein.

Incidentally, respondent's notice also violates Rule 30 of the Federal Rules of Civil Procedure because it attempts to require petitioner, a corporation, to produce, in the first instance, certain named witnesses. Under Rule 30 petitioner has the right to designate what witnesses shall appear on its behalf.

Petitioner has brought its motion on by order to show cause because a stay is required by the short and unreasonable notice given to petitioner by respondent. Petitioner does not want to be in default with respect to the notice while this motion to vacate and quash is pending. No prior application for this relief has been made. It is respectfully requested that petitioner's motion be granted in its entirety.

s/
Jonathan S. Gaynin

Sworn to before me this
1st day of March, 1976.

s/

RICHARD E. HAUN
Notary Public, State of New York
No. 24-4616542
Qualified in Kings County
Commission Expires March 30, 1977

EXHIBIT A TO AFFIDAVIT OF
JONATHAN S. GAYNIN

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner

76 Civ. 887(CES)

-against-

Asiatic Petroleum Corporation,

Respondent

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENSPOON, 600 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Petitioner, Grand Bahama Petroleum Company, Limited, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths, by deposing officers and executives of Grand Bahama Petroleum Company, Limited In each instance, the oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The deposition of Grand Bahama Petroleum Company, Limited will be taken by deposing the following officers and directors of the corporation according to the following schedule:

1. Thomas C. Covert, as Managing Director and an officer of Grand Bahama Petroleum Company, Limited, will be deposed beginning at 9:00 a.m., Tuesday, March 2, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

2. Edward M. Carey, a director of Petitioner, will be deposed beginning at 9:00 a.m., Wednesday, March 3, 1976, at

Exhibit A

EXHIBIT A TO AFFIDAVIT OF
JONATHAN S. GAYNIN

the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

You will also take notice that Mr. Covert and Mr. Carey are to bring with them and produce at said time and place the following:

The word "document" or "documents" as used herein shall be deemed to include any written, printed, recorded, or graphic matter, photographic matter or sound reproductions however produced or reproduced now or formerly in the possession, custody or control of the Petitioner, any of its directors, officers, employees or attorneys or any of them.

1. Documents which refer or relate to Asiatic Petroleum Corporation.

2. Documents which refer or relate to what was defined in Exhibit S in the Petition herein as "Contract 72/530."

3. Documents which refer or relate to what was defined in Exhibit S in the Petition herein as "Contract to Purchase Oil."

4. Documents which refer or relate to the acquisition of residual fuel oil by Grand Bahama Petroleum Company, Limited from April 1, 1972 to date hereof.

5. Shipping documents including invoices, receipts, bills of lading, certificates of origin, certificates of quantity and quality, charter parties, inspection reports at port of loading and at port of unloading relating to residual fuel oil sold pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

6. Documents which refer or relate to the purchase, sale, consumption, refining or use of the residual fuel oil sold pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

7. Documents reflecting the disposition of the residual fuel oil acquired pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

EXHIBIT A TO AFFIDAVIT OF
JONATHAN S. GAYNIN

8. Documents which refer or relate to New England Petroleum Corporation or originals or copies of which documents were transmitted to or received by New England Petroleum Corporation concerning residual fuel oil from April 1, 1972 to date hereof.

9. Documents which refer or relate to New England Petroleum Corporation or originals or copies of which documents were transmitted to or received by New England Petroleum Corporation in connection with either Contract 72/530 or the Contract to Purchase Oil or both from April 1, 1972 to date hereof.

10. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil and arising out of either Contract 72/530 or the Contract to Purchase Oil or both from April 1, 1972 to date hereof.

11. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil sold to any customer in the United States from April 1, 1972 to date hereof.

12. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil acquired from any seller in the United States from April 1, 1972 to date hereof.

13. Documents which refer or relate to any business done by Grand Bahama Petroleum Company, Limited with any purchaser of product from Grand Bahama Petroleum Company, Limited from April 1, 1972 to date hereof.

14. Documents which refer or relate to any meetings between representatives of Grand Bahama Petroleum Company, Limited and Asiatic Petroleum Corporation from December 1, 1970 to date hereof.

15. Documents reflecting on a daily, weekly or monthly basis the name or type of each crude oil processed and the quantity

of each thereof and the quantity of number 6 residual fuel oil produced therefrom during the period April 1, 1972 to date hereof for Grand Bahama Petroleum Company, Limited's refinery in Grand Bahama.

16. Documents reflecting the "TBP" analysis of each of the crude oils identified in the records described in no. 15 above.

17. Documents showing the "API" specific gravity of each of the crude oils identified in the records described in no. 15 above.

18. Documents reflecting the income tax reported for each period filed with the Bahamian Government and the annual income tax returns for the years 1972, 1973, 1974 and 1975.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this 1st day of March, 1976.

ASIATIC PETROLEUM CORPORATION'S
NOTICE TO TAKE DEPOSITION

2 03 PM '75

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner

76 Civ. 887(CES)

-against-

Asiatic Petroleum Corporation,

Respondent

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION.

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENSPOON, 600 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Petitioner, Grand Bahama Petroleum Company, Limited, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths, by deposing officers and executives of Grand Bahama Petroleum Company, Limited. In each instance, the oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The deposition of Grand Bahama Petroleum Company, Limited will be taken by deposing the following officers and directors of the corporation according to the following schedule:

1. Thomas C. Covert, as Managing Director and an officer of Grand Bahama Petroleum Company, Limited, will be deposed beginning at 9:00 a.m., Tuesday, March 2, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

2. Edward M. Carey, a director of Petitioner, will be deposed beginning at 9:00 a.m., Wednesday, March 3, 1976, at

ASIATIC PETROLEUM CORPORATION'S
NOTICE TO TAKE DEPOSITION

the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

You will also take notice that Mr. Covert and Mr. Carey are to bring with them and produce at said time and place the following:

The word "document" or "documents" as used herein shall be deemed to include any written, printed, recorded, or graphic matter, photographic matter or sound reproductions however produced or reproduced now or formerly in the possession, custody or control of the Petitioner, any of its directors, officers, employees or attorneys or any of them.

1. Documents which refer or relate to Asiatic Petroleum Corporation.

2. Documents which refer or relate to what was defined in Exhibit S in the Petition herein as "Contract 72/530."

3. Documents which refer or relate to what was defined in Exhibit S in the Petition herein as "Contract to Purchase Oil."

4. Documents which refer or relate to the acquisition of residual fuel oil by Grand Bahama Petroleum Company, Limited from April 1, 1972 to date hereof.

5. Shipping documents including invoices, receipts, bills of lading, certificates of origin, certificates of quantity and quality, charter parties, inspection reports at port of loading and at port of unloading relating to residual fuel oil sold pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

6. Documents which refer or relate to the purchase, sale, consumption, refining or use of the residual fuel oil sold pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

7. Documents reflecting the disposition of the residual fuel oil acquired pursuant to either Contract 72/530 or the Contract to Purchase Oil or both.

ASIATIC PETROLEUM CORPORATION'S
NOTICE TO TAKE DEPOSITION

8. Documents which refer or relate to New England Petroleum Corporation or originals or copies of which documents were transmitted to or received by New England Petroleum Corporation concerning residual fuel oil from April 1, 1972 to date hereof.

9. Documents which refer or relate to New England Petroleum Corporation or originals or copies of which documents were transmitted to or received by New England Petroleum Corporation in connection with either Contract 72/530 or the Contract to Purchase Oil or both from April 1, 1972 to date hereof.

10. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil and arising out of either Contract 72/530 or the Contract to Purchase Oil or both from April 1, 1972 to date hereof.

11. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil sold to any customer in the United States from April 1, 1972 to date hereof.

12. Documents which refer or relate to accounting or journal entries in the books and records of Grand Bahama Petroleum Company, Limited, concerning residual fuel oil acquired from any seller in the United States from April 1, 1972 to date hereof.

13. Documents which refer or relate to any business done by Grand Bahama Petroleum Company, Limited with any purchaser of product from Grand Bahama Petroleum Company, Limited from April 1, 1972 to date hereof.

14. Documents which refer or relate to any meetings between representatives of Grand Bahama Petroleum Company, Limited and Asiatic Petroleum Corporation from December 1, 1970 to date hereof.

15. Documents reflecting on a daily, weekly or monthly basis the name or type of each crude oil processed and the quantity

of each thereof and the quantity of number 6 residual fuel oil produced therefrom during the period April 1, 1972 to date hereof for Grand Bahama Petroleum Company, Limited's refinery in Grand Bahama.

16. Documents reflecting the "TBP" analysis of each of the crude oils identified in the records described in no. 15 above.

17. Documents showing the "API" specific gravity of each of the crude oils identified in the records described in no. 15 above.

18. Documents reflecting the income tax reported for each period filed with the Bahamian Government and the annual income tax returns for the years 1972, 1973, 1974 and 1975.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this 1ST day of March, 1976.

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION
OF GRAND BAHAMA PETROLEUM COMPANY

2 Subpoenas

FILED
IN THE UNITED STATES DISTRICT COURT
MAR 3 2 50 PM '76
S.D. OF N.Y.

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner

-against-

Asiatic Petroleum Corporation,

Respondent

76 Civ. 887(CES)

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENIGOON, 000 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Petitioner, Grand Bahama Petroleum Company, Limited, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths, by deposing officers and executives of Grand Bahama Petroleum Company, Limited. In each instance, the oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The deposition of Grand Bahama Petroleum Company, Limited will be taken by deposing the following officers and directors of the corporation according to the following schedule:

1. Edward M. Carey, a director of Petitioner, will be deposed beginning at 10:00 a.m., Monday, March 8, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

2. Thomas C. Covert, as Managing Director and an officer of Grand Bahama Petroleum Company, Limited, will be deposed beginning at 10:00 a.m., Tuesday, March 9, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION
OF GRAND BAHAMA PETROLEUM COMPANY

3. Denton L. DeMun, a director of Petitioner, will be deposed beginning at 10:00 a.m., Wednesday, March 10, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

4. Peter Hunter, a director of Petitioner, will be deposed beginning at 2:00 p.m., Wednesday, March 10, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

5. Richard C. Weinand will be deposed beginning at 10:00 a.m., Thursday, March 11, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

6. E. C. Carey will be deposed beginning at 2:00 p.m., Thursday, March 11, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this 11th day of March, 1976.

ASIATIC PETROLEUM CORPORATION'S NOTICE OF TAKING DEPOSTION OF ANDRE VON KUHN

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent

---

76 Civ. 887(CES)

MAR 5 2 49 PM '76
S.D. OF N.Y.

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENSPOON, 600 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Andre von Kuhn beginning at 3:00 p.m. on Monday, March 8, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Respectfully submitted,

John H. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. [illegible]
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this 4th day of March, 1976.

ORDER TO SHOW CAUSE
WITH ~~A STAY~~ DATED MARCH 5, 1976

United States District Court
Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Order to Show Cause

WITH A STAY

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent fo from prosecuting disputes thereunder in a civil action

- -x

On the annexed affidavits of Richard G. Weinand, Frederick J. Wilson, and Samuel N. Greenspoon, sworn to March 5, 1976, and respondent's notices to examine Denton de Baum, Peter R. Hunter, Richard G. Weinand, Edward C. Carey, and Andre Von Kuhn, it is

Ordered that the respondent show cause before Hon. Charles E. Stewart, one of the Judges of this Court, at a term for motions, to be held in Room 2602 of the United States Courthouse, Foley Square, New York, New York, at 10 A. M. on March 10, 1976, why an order should not be made herein vacating the notices to take the depositions of DeBaum, Hunter, Weinand, Edward C.Carey, and Von Kuhn, on the grounds that there can be no showing of any need to examine any of them; their depositions are noticed solely for harassment and delay; the issue of the application of BCL, Sec. 1312 is a sham issue; none of them is under the control of or an officer or official of Petco, and equity mandates an end to discovery on such baseless issue, and it is further

CES

ORDER TO SHOW CAUSE
WITH A STAY DATED MARCH 5, 1976

Ordered that pending the hearing of this motion the depositions of DeBaun, Hunter, Weinand, Edward C. Carey and Von Kuhn, are hereby stayed; and it is further

Ordered, that sufficient cause appearing let personal service of a copy of this order and of the papers on which it is made on respondent or on respondent's attorney, One Rockefeller Plaza, New York, New York, on or before 6 P.M. on March 5, 1976 be deemed sufficient service and notice hereof.

CES

DATED: New York, New York
March 5, 1976

s/ Charles E. Stewart, Jr.
United States District Judge

CES

Issued 4:30 P.M.

AFFIDAVIT OF SAMUEL N. GREENSPOON IN SUPPORT OF ORDER TO SHOW CAUSE DATED MARCH 5, 1976

United States District Court
Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Affidavit

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action

- -x

State of New York)
) ss:-
County of New York)

Samuel N. Greenspoon, being duly sworn, deposes and says:-

I am an attorney herein for petitioner and familiar with the facts set forth herein. I submit this affidavit in support of petitioner's application to vacate the notices to take the depositions of Denton De Baun, Peter R. Hunter, Richard G. Weinand, Edward C. Carey and Andre Von Kuhn (copies annexed).

The contract at bar involves solely interstate or foreign commerce. As such the New York Courts could not constitutionally close their doors to Petco, a foreign corporation, under BCL Sec. 1312, whether or not Petco is doing business in New York.

That was the square holding of the United States Supreme Court in Allenberg Cotton Co., Inc. v. Pittman, 419 U.S. 20, 34 (1974):-

BEST COPY AVAILABLE

AFFIDAVIT OF SAMUEL N. GREENSPOON IN SUPPORT OF ORDER TO SHOW CAUSE DATED MARCH 5, 1976

"We hold only that Mississippi's refusal to honor and enforce contracts made for interstate or foreign commerce is repugnant to the Commerce Clause."

Respondent cites no case and we know of none which would apply a state statute barring recourse to the Courts to non-qualified corporations, doing business in the State, in arbitration proceedings.

The federal law seems squarely to conflict with respondent's view that BCL Sec. 1312 would be applied under Title 9 no matter what the basis for invoking federal jurisdiction.

Even New York State's Courts do not apply BCL Sec. 1312 to matters involving arbitration.

It is self-evident that respondent's appetite for discovery is insatiable. They now seek to examine five witnesses in addition to Covert and Edward M. Carey who will be examined on Monday, March 8, 1976. There is no showing (and can be none) that the depositions of Covert and Edward M. Carey will leave open any possible line of inquiry.

All that respondent can hope for here is delay. We submit that its hope should be denied.

No previous application for the relief requested herein has made to this Court or any Judge thereof.

Samuel N. Greenspoon

Sworn to before me this
5th day of March, 1976

FLORENCE DOBER
Commissioner of Deeds
City of New York 4-587
Certificate filed in New York County
Commission Expires August 1, 1977

[illegible] a.m., Tuesday, March 9, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

BEST COPY AVAILABLE

NOTICE OF TAKING DEPOSITION
ANNEXED TO AFFIDAVIT OF
SAMUEL N. GREENSPOON

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner

76 Civ. 887(CES)

-against-

Asiatic Petroleum Corporation,

Respondent

ASIATIC PETROLEUM CORPORATION'S
NOTICE OF TAKING DEPOSITION

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENSPOON, 600 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Petitioner, Grand Bahama Petroleum Company, Limited, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths, by deposing officers and executives of Grand Bahama Petroleum Company, Limited. In each instance, the oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

The deposition of Grand Bahama Petroleum Company, Limited will be taken by deposing the following officers and directors of the corporation according to the following schedule:

1. Edward M. Carey, a director of Petitioner, will be deposed beginning at 10:00 a.m., Monday, March 8, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

2. Thomas C. Covert, as Managing Director and an officer of Grand Bahama Petroleum Company, Limited, will be deposed beginning at 10:00 a.m., Tuesday, March 9, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

NOTICE OF TAKING DEPOSITION ANNEXED TO AFFIDAVIT OF SAMUEL N. GREENSPOON

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent

76 Civ. 887(CES)

ASIATIC PETROLEUM CORPORATION'S NOTICE OF TAKING DEPOSITION

TO: GRAND BAHAMA PETROLEUM COMPANY, LIMITED, AND ITS ATTORNEYS OF RECORD, EATON, VAN WINKLE & GREENSPOON, 600 THIRD AVENUE, NEW YORK, NEW YORK 10016

Please take notice that Asiatic Petroleum Corporation, Respondent in the above entitled action, will take the deposition of Andre von Kuhn beginning at 3:00 p.m. on Monday, March 8, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York, upon oral examination pursuant to the Federal Rules of Civil Procedure, before a notary public or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this day of March, 1976.

EXHIBIT A TO AFFIDAVIT OF FREDERICK J. WILSON

beginning at 10:00 a.m., Wednesday, March 10, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

4. Peter Hunter, a director of Petitioner, will be deposed beginning at 2:00 p.m., Wednesday, March 10, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

5. Richard G. Weinand will be deposed beginning at 10:00 a.m., Thursday, March 11, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

6. E. C. Carey will be deposed beginning at 2:00 p.m., Thursday, March 11, 1976, at the offices of Asiatic Petroleum Corporation, One Rockefeller Plaza, New York, New York.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Copies of the above Notice of Taking Deposition were hand delivered to the attorneys of record for Petitioner on this day of March, 1976.

AFFIDAVIT OF RICHARD G. WEINAND
IN SUPPORT OF ORDER TO SHOW CAUSE
DATED MARCH 5, 1976

United States District Court

Southern District of New York

- -x

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Affidavit

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

- -x

State of New York)
) ss:-
County of New York)

Richard G. Weinand, being duly sworn, deposes and says:-

I am now and have been for some years an officer of New England Petroleum Corporation, the parent of Grand Bahama Petroleum Company Limited ("Petco").

I am not now and never have been either an officer or a director of Petco; nor have I ever signed or executed a contract on behalf of Petco. So far as I know all Petco contracts are signed by it in the Bahamas.

What about negotiations?

Richard G. Weinand

Sworn to before me this
5th day of March, 1976

CHARLES G. MILLS IV
Notary Public, State of New York

United States District Court
Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887 (CES)

Affidavit

For an Order pursuant to 9 U.S.C.A. Secs. 1 et seq. directing the Respondent to arbitrate in the manner provided for in the agreement between the parties and enjoining the Respondent from prosecuting disputes thereunder in a civil action.

State of New York)
) ss:-
County of New York)

Frederick J. Wilson, being duly sworn, deposes and says:-

I am the Secretary of New England Petroleum Corporation ("Nepco"). I have obtained copies of certain minutes of Grand Bahama Petroleum Company Limited ("Petco"), true copies of which are hereby annexed.

The minutes of Petco's meeting of May 2, 1973 (Exhibit A), show resignations of various officers and directors. After such resignations and from and after May 2, 1973 the officers and directors of Petco were as follows:

Officers	Directors
Thomas C. Covert	Covert
Alan M. Hoskins	Hoskins
	Edward M. Carey

Covert and Hoskins were located at Petco's offices in Freeport, Bahamas.

The minutes of November 6, 1973 (Exhibit B) show the election of the following officers and directors of Petco:

Officers	Directors
Covert	Covert
Hoskins	Hoskins
	Edward M. Carey

Covert and Hoskins were then located at Petco's offices in Freeport, Bahamas.

The minutes of November 6th, 1974 (Exhibit C) show the election of the following officers and directors of Petco:

Officers	Directors
Covert	Covert
Lauria	Lauria
Meade	Bastien
	Edward M. Carey

Covert, Lauria and Meade were then located at Petco's offices in Freeport, Bahamas while Bastien was located in London, England.

The minutes of November 6th, 1975 (Exhibit D) show the election of officers and directors of Petco as follows:

Officers	Directors
Covert	Covert
Mueller	Mueller
Lloyd	Edward M. Carey

Covert, Mueller and Lloyd were then and still are located at Petco's offices in Freeport, Bahamas.

Neither Hunter nor E.C. Carey is in New York at this time. I believe they are in the South on business.

De Baun is on vacation at this time and is not in the office.

Frederick J. Wilson

Sworn to before me this
5th day of March, 1976

Richard E. Hahn

RICHARD E. HAHN
Notary Public, State of New York
No. 24-4516542
Qualified in Kings County
Commission Expires March 30, 1977

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

GRAND BAHAMA PETROLEUM COMPANY LIMITED

RESOLUTION OF DIRECTORS

In accordance with the powers vested in the Directors of the Company by virtue of Article 85 of the Articles of Association it is hereby RESOLVED as follows:-

THAT the resignations of the following:

CAREY, Edward M.	President
DEBAUN, Denton L.I.	Vice President, Asst. Treasurer, Asst. Secretary and Director
COVERT, Thomas C.	Vice President
HOSKINS, Alan S.	Asst. Secretary
CAREY, Edward C.	Director
HUNTER, Peter R.	Vice-President
KUHN, Wilbur J.	Secretary
WILSON, Frederick J.	Assistant Secretary

be accepted with effect from the date of this Resolution and

THAT the following be and hereby are elected as indicated:

T.C. Covert	Managing Director and Director
A.S. Hoskins	Treasurer, Director and Secretary
E.M. Carey	Director

to serve until the next Annual General Meeting or until their successors be appointed.

Dated the 2nd day of May 1973.

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Vice-President of the Companies, to take effect forthwith.

Yours very truly,

Thomas C. Covert

Thomas C. Covert

EXHIBIT A TO AFFIDAVIT OF
FREDRICK J. WILSON

May 2, 1973.

The Board of Directors,
Grand Bahama Petroleum Company Limited,
Overseas Petroleum Company Limited,
Netco Bahamas Limited,
Credit Bank Building,
Freeport, Bahamas.

Dear Sirs:

Please accept my resignation as Vice-President of the Companies, to take effect forthwith.

Yours very truly,

Thomas C. Covert.

Thomas C. Covert.

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Assistant Secretary of the Companies, to take effect forthwith.

Yours very truly,

Alan S. Hoskins

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973.

The Board of Directors,
Grand Bahama Petroleum Company Limited,
Overseas Petroleum Company Limited,
Netco Bahamas Limited,
Credit Bank Building,
Freeport, Bahamas.

Dear Sirs:

Please accept my resignation as Assistant Secretary of the Companies, to take effect forthwith.

Yours very truly,

Alan S. Hoskins.

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Vice-President, Assistant Treasurer, Assistant Secretary and Director of the Companies, to take effect forthwith.

Yours very truly,

D.L. DeBaun

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, G.B.

Dear Sirs:

Please accept my resignation as President of the Companies, to take effect forthwith.

Yours very truly,

E.M. Carey

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Neteo Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Director of the Companies, to take effect forthwith.

Yours very truly,

E.C. Carey

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Secretary of the Companies to take effect forthwith.

Yours very truly,

W.J. Holleman, Jr.

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Assistant Vice-President of the Companies, to take effect forthwith.

Yours very truly,

Andrzej von Kuhn

EXHIBIT A TO AFFIDAVIT OF
FREDERICK J. WILSON

May 2, 1973

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Vice-President of the Companies, to take effect forthwith.

Yours very truly,

P.R. Hunter

EXHIBIT B TO AFFIDAVIT OF
FREDERICK J. WILSON

Minutes of the Annual General Meeting of Shareholders held at the Registered Office of the Company in the Kipling Building, Freeport, Bahamas on the 6th day of November, 1973 at 10.00 a.m.

Present:

New England Petroleum Corporation - by proxy

Thomas C. Covert

Alan S. Hoskins

Catherine Pinder

Charles Smith

being all the shareholders of the Company.

In Attendance:

Edward M. Carey

The Managing Director Mr. T. C. Covert acted as Chairman and Mr. Alan S. Hoskins acted as Secretary of the Meeting and kept the Minutes thereof.

The Secretary presented to the Meeting a proxy and waiver of notice form executed by New England Petroleum Corporation.

The Minutes of the previous meeting of shareholders held on the 29th November, 1972 were duly read and approved.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Directors of the Company for the ensuing year:

Thomas C. Covert

Alan S. Hoskins

Edward M. Carey

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Officers of the Company for the ensuing year:

Thomas C. Covert - Managing Director

Alan S. Hoskins - Treasurer & Secretary

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the presentation of accounts be and hereby is waived in accordance with the provisions of Articles 117 & 118 of the Articles of Association.

Upon motion duly made, seconded and unanimously carried, it was

EXHIBIT B TO AFFIDAVIT OF
FREDERICK J. WILSON

firmed, ratified and approved, notwithstanding any defect apparent or latent, inherent in their appointment as Directors and Officers.

The Assistant Secretary was instructed to prepare, seal and forward the Annual Return of the Company to the Registrar General as required under Section 23 of The Companies Act.

There being no further business to come before the meeting on motion duly made, seconded and unanimously carried, it was closed.

Chairman

Secretary

New England Petroleum Corporation- by proxy

EXHIBIT C TO AFFIDAVIT OF
FREDERICK J. WILSON

Minutes of the Annual General Meeting of shareholders held at the Registered Office of the Company in the Kipling Building, Freeport, Bahamas, on the 6th day of November, 1974 at 10:00 a.m.

Present:

New England Petroleum Corporation - by proxy
Thomas. C. Covert
Robert J. Lauria
Barry I. Meade
Richard F. Roberts

being all the shareholders of the Company.

The Managing Director, Mr. T.C. Covert, acted as Chairman and Mr. Robert Lauria acted as Secretary of the Meeting and kept the Minutes thereof.

The Secretary presented to the Meeting a proxy and waiver of notice form executed by New England Petroleum Corporation.

The Minutes of the previous meeting of shareholders held on the 6th November, 1973 were duly read and approved.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Directors of the Company for the ensuing year:

Thomas C. Covert
Robert J. Lauria
Richard J. Bastien
Edward M. Carey

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Officers of the Company for the ensuing year:

Thomas C. Covert	- Managing Director
Robert J. Lauria	- Treasurer & Secretary
Barry I. Meade	- Assistant Secretary & Assistant Treasurer

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the presentation of accounts be and hereby is waived in accordance with the provisions of Articles 117 & 118 of the Articles of Association.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that all prior acts of the Directors and Officers in the course of the performance of their duties be and they are hereby con-

EXHIBIT C TO AFFIDAVIT OF
FREDERICK J. WILSON

firmed, ratified and approved, notwithstanding any defect apparent or latent, inherent in their appointment as Directors and Officers.

The Secretary was instructed to prepare, seal and forward the Annual Return of the Company to the Registrar General as required under Section 23 of the Companies Act.

There being no further business to come before the meeting on motion duly made, seconded and unanimously carried, it was closed.

Chairman

Secretary

New England Petroleum Corporation
- by proxy

EXHIBIT C TO AFFIDAVIT OF
FREDERICK J. WILSON

June 2nd, 1975.

The Board of Directors,
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Credit Bank Building
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Assistant Treasurer and as Assistant Secretary of the Companies, to take effect forthwith.

Yours very truly,

Barry I. Meade

EXHIBIT C TO AFFIDAVIT OF
FREDERICK J. WILSON

June 2nd, 1975.

The Board of Directors
Grand Bahama Petroleum Company Limited
Overseas Petroleum Company Limited
Netco Bahamas Limited
Credit Bank Building,
Freeport, Bahamas

Dear Sirs:

Please accept my resignation as Treasurer and Secretary of the Companies, to take effect forthwith.

Yours very truly,

R. J. Lauria

R. J. Lauria

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EXHIBIT D TO AFFIDAVIT OF
FREDERICK J. WILSON

GRAND BAHAMA PETROLEUM COMPANY LIMITED

Minutes of the Annual General Meeting of shareholders held at the Registered Office of the Company in the Kipling Building, Freeport, Bahamas, on the 6th day of November, 1975 at 10:00 a.m.

Present:

New England Petroleum Corporation - by proxy
Thomas C. Covert
Ralph H. Mueller
John D. Lloyd
William E. Anderson

being all the shareholders of the Company.

The Managing Director, Mr. T. C. Covert, acted as Chairman and Mr. Ralph H. Mueller acted as Secretary of the Meeting and kept the Minutes thereof.

The Secretary presented to the Meeting a proxy and waiver of notice form executed by New England Petroleum Corporation.

The Minutes of the previous meeting of shareholders held on the 6th November, 1974 were duly read and approved.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Directors of the Company for the ensuing year:

Thomas C. Covert
Ralph H. Mueller

Edward M. Carey

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the following persons be and hereby are elected Officers of the Company for the ensuing year:

Thomas C. Covert	-Managing Director
Ralph H. Mueller	-Treasurer/Controller & Secretary
John D. Lloyd	-Assistant Secretary & Assistant Controller

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the presentation of accounts be and hereby is waived in accordance with the provisions of Articles 117 & 118 of the Articles of Association.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that all prior acts of the Directors and Officers in the course of the performance of their duties be and they are hereby confirmed, ratified and approved, notwithstanding any defect, apparent or latent, inherent in their appointment as Directors and Officers.

The Secretary was instructed to prepare, seal and forward the Annual Return of the Company to the Registrar General as required under Section 23 of the Companies Act.

There being no further business to come before the meeting on motion duly made, seconded and unanimously carried, it was closed.

TCC

Chairman

Secretary

TCC

New England Petroleum Corporation
- by proxy

AFFIDAVIT OF MICHAEL J. PAULLI
IN OPPOSITION TO PETITION TO COMPEL ARBITRATION

United States District Court
Southern District of New York
----------X

In the Matter of Grand Bahama
Petroleum Company, Limited,

Petitioner,

76 Civ. 887 (CES)

--against--

Asiatic Petroleum Corporation,

Respondent.

For an Order pursuant to 9 U.S.C.A.
Secs. 1 et seq. directing the Respondent
to arbitrate in the manner provided for
in the agreement between the parties and
enjoining the Respondent from prosecuting
disputes thereunder in a civil action.
----------X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MICHAEL J. PAULLI, being duly sworn, deposes and says:

I am a Vice President of Asiatic Petroleum Corporation, the Respondent herein, in charge of Respondent's Marketing Administration.

I am familiar with the facts set forth herein and I submit this affidavit in opposition to Petitioner's application for an order directing Respondent to arbitrate and in support of Respondent's motion to dismiss Petitioner's application.

Since December 17, 1970 I have been in charge of Respondent's Marketing Administration and I have been in charge of Respondent's activities relating to the sale of petroleum products since that time. Since that time I have been directly involved in the negotiations which led to Petitioner's Contracts ASC 72/527 with New England Petroleum Corporation ("Nepco") and ASC 72/530 with Grand Bahama Petroleum Company, Limited ("Petco") both of which were dated as of April 1, 1972 and in most, if not all, of the negotiations relating to these contracts to and including November 5, 1975, the date on which each of these contracts

was terminated by Nepco and Petco, respectively.

All of the negotiations involving the making of these contracts and the subsequent negotiations thereunder prior to their termination were held only in New York. In all the negotiations involving Contract ASC 72/530 with Petco, the representatives for that company were one or more of Messrs. R. Weinand, P. Hunter, A. von Kuhn and T. Costikyan, all of whom are or were employees and officers of Nepco and Mr. R. Manning, an officer and/or Counsel to Nepco. At no time did Asiatic have negotiations relating to Contract ASC 72/530 with Petco outside the City of New York nor did Asiatic ever meet, negotiate or discuss with Mr. T. Covert, the Managing Director of Petco, and its principal, if not sole, executive officer regarding that contract.

In April 1972 meetings were held with representatives of Nepco and Petco to discuss various disputes between Petitioner and Respondent, the Nepco representatives at these meetings being Messrs. Weinand, Hunter and Manning at two meetings held on April 3 and April 19, 1972. As a result of these meetings the disputes between the parties were settled, the settlement being reflected in a memorandum entitled "MEMORANDUM OF AGREEMENT AS OF APRIL 19, 1972", a photocopy of which is annexed hereto and marked Exhibit A. As indicated thereon, this Memorandum was signed on behalf of Petco by Mr. Hunter. To the best of my knowledge and belief, at no time subsequent to April 1, 1972 have Messrs. Weinand, Hunter and Manning been residents of the Grand Bahamas or employees of Petco.

Each of Contracts ASC 72/527 and 72/530 were long-term contracts, requiring deliveries of over 83,000,000 barrels and 70,000,000 barrels, respectively, and having a combined total value at today's prices well in excess of One Billion Dollars.

During the price renegotiations between Petitioner and Respondent during the fourth quarter of 1974, the representatives for both Nepco and Petco were Messrs. Weinand, Manning and Costikyan. Mr. Covert was in no way involved in these negotiations.

AFFIDAVIT OF MICHAEL J. PAULLI
IN OPPOSITION TO PETITION TO COMPEL
ARBITRATION

On November 3, 1975 Contracts ASC 72/527 and ASC 72/530 were terminated by a letter dated November 3, 1975 sent by Nepco to Respondent which, I am informed, was signed in New York on behalf of Petco purportedly by Mr. T. Covert. Attached hereto as Exhibit B is a copy of that letter.

M. J. Paulli
M. J. Paulli

Sworn to before me
this 10th day of March, 1976.

Pamela Lynn Valle

PAMELA LYNN VALLE
NOTARY PUBLIC, State of New York
No. 03-[illegible]
Qualified in [illegible] County
Certificate Filed in New York County
Commission Expires March 30, 1978

EXHIBIT A TO AFFIDAVIT OF
MICHAEL J. PAULLI

EXHIBIT A

MEMORANDUM OF AGREEMENT AS OF APRIL 19, 1972

It is hereby agreed as follows:

1. Contracts ASC 67/029, 67/124, 69/590 and 69/591, and that part of Contract ASC 68/071 relating to the sale and delivery of high sulphur fuel oil all between Asiatic and Nepco, and Contract ASC 68/084 between Asiatic and Bahama, are hereby cancelled effective March 31, 1972.

2. During the period April 1/June 30, 1972 Nepco will purchase from Asiatic 578,000 barrels of 1% sulphur fuel oil meeting the specifications set forth in Contract ASC 67/124 and shall pay Asiatic therefor a price of $3.01 per barrel FOB Caribbean loading port. All other terms and conditions of Contract ASC 67/124 shall apply to these purchases.

All purchases (786,819 barrels) of 1% sulphur fuel oil made by Nepco from Asiatic during the first calendar quarter of 1972 shall be paid by Nepco to Asiatic at $3.01/bbl. FOB loading port and all such purchases shall be invoiced or re-invoiced at this price.

3. During the period April 1, 1972 to March 31, 1978 Asiatic will sell and deliver, and Nepco and Bahama will purchase, receive and pay for 70,000 barrels per day of two grades of residual fuel oil, such grades being maximum 300 and maximum 450 viscosity with a maximum sulphur content of 2.8%. The allocation between the two grades of the quantities to be sold and delivered shall be agreed between the parties.

4. (a) The price for this 70,000 b/d shall be $2.05 per barrel FOB Caribbean loading port, such price to be firm for 1972 deliveries. In addition, Nepco and Bahama shall pay to Asiatic an amount per barrel which shall be not less than 50% of the amount of the first Venezuelan Host Government Take other than the quarterly freight adjustment ("HGT")

applicable to the grades of oil delivered after December 31, 1972 (which shall include any increased HGT effective after April 1, 1972) it being understood and agreed that Nepco and Bahama will endeavor to pay the balance in excess of 50% to Asiatic. If Nepco and Bahama shall pay Asiatic less than 100% of the first HGT increase, the price for the 70,000 b/d of fuel oil to be delivered during the twelve-month period commencing July 1, 1973 will be renegotiated by the parties during the period April 1/June 30, 1973. If the parties cannot agree on a new price to be paid for oil to be delivered on and after July 1, 1973, Asiatic shall have the option to terminate this Agreement as of June 30, 1973 upon written notice to Nepco and Bahama, or to continue it at the price in effect prior to such renegotiation under the conditions set forth in paragraph (b).

(b) If Nepco and Bahama agree to pay 100% of the first HGT increase there shall be no renegotiation of the price payable by Nepco and Bahama until the period October 1/December 31, 1974 when the parties shall renegotiate the price for the oil to be supplied during the calendar year commencing January 1, 1975 unless Nepco and Bahama shall not have agreed to pay Asiatic 100% of any HGT increase after the first HGT increase in which event the price for the oil to be delivered after the date such subsequent HGT increase is initially imposed shall be renegotiated during the thirty (30) day period immediately after Asiatic gives notice to Nepco and Bahama of such subsequent HGT increase. In the event the parties cannot agree on a renegotiated price during that thirty-day period Asiatic will have the right to terminate the contract sixty (60) days after the expiration of such thirty-day period or to continue it at the price in effect prior to such renegotiation under the conditions provided for herein.

(c) If during any period after December 31, 1972 Nepco and Bahama are paying 100% of the then applicable HGT, the effective price will be reduced to the extent of any decrease in HGT, provided that Asiatic will not be obligated to reduce such price by an amount exceeding the aggregate of all increases in HGT after December 31, 1972; in the event Asiatic does not reduce the price by an amount equal to 100% of any such decrease the price for oil to be delivered after the effective date of such HGT decrease shall be renegotiated during the thirty (30) day period immediately after the date of such HGT decrease. In the event the parties cannot agree on a renegotiated price during that thirty-day period Nepco and Bahama will have the right to terminate the contract sixty (60) days after the expiration of such thirty-day period or to continue the contract at the price in effect prior to such renegotiation under the conditions set forth in paragraph (b).

(d) In any event price renegotiation for fuel oils to be delivered during each calendar year after 1974 shall take place during the fourth calendar quarter of the preceding year, and any renegotiated price may include provision for increases or decreases corresponding to changes in HGT during such year. The price for fuel oils to be delivered after the expiration of each one-year period will be renegotiated by the parties during the last ninety (90) days of that one-year period and if the parties cannot agree on a new price for such oils either party shall have the right to terminate the Agreement upon sixty-days' written notice to the other; if neither party terminates, the Agreement will continue during the next calendar year at the price in effect prior to such renegotiation.

(e) In the event there is a difference between the quarterly freight adjustment in effect during the second calendar quarter of 1972 and the first calendar quarter of 1973 and such difference represents

(i) an increase, then the net tax effect of such increase will be added to the price of $2.05 per barrel;

(ii) a decrease, then the net tax effect of such decrease will be deducted from the first HGT increase referred to in paragraph 4 (a) and will be considered to apply in reduction of that part of such HGT increase as to which Nepco and Bahama are not obligated to pay to Asiatic.

Automatic HGT increases or decreases in the freight adjustment for the second quarter of 1973 and thereafter will apply without regard to the other provisions hereof. In no case during the life of the Agreement will the price payable by Nepco and Bahama be less than $2.05 per barrel.

In the event of a basic change in the provisions of the automatic freight adjustment, the provision of this paragraph will be amended so as to give effect to the intent expressed herein.

(f) For the purpose of this Agreement the term HGT will include Government participation to the extent it represents an ascertainable out-of-pocket cost to Asiatic or its suppliers.

5. In the event that in any calendar quarter Nepco and Bahama fail to purchase at least 90% of the quantity requested by them prior to the commencement of that quarter for delivery during that quarter (which requested amount shall not be less than 90% nor more than 110% of 6,400,000 barrels of the maximum 2.8% sulphur fuel oils) and Nepco and Bahama cannot furnish satisfactory evidence that such failure was due to circumstances beyond their reasonable control, then Asiatic shall have the right to terminate this Agreement on not less than ninety (90) days written notice to Nepco and Bahama.

In addition, Asiatic shall have the right to terminate this Agreement upon giving not less than sixty (60) days notice of termination if at the

EXHIBIT A TO AFFIDAVIT OF
MICHAEL J. PAULLI

end of any twelve-month period ending March 31 Nepco and Bahama shall not have purchased a minimum of 23,000,000 barrels during that period less the amount as to which Nepco and Bahama have furnished such satisfactory evidence.

6. Except for the payment of outstanding invoices, cargoes of oil delivered and not yet invoiced and demurrage claims Nepco, Bahama and Asiatic shall each release the other from all claims under the contracts referred to in 1. above to and including the date hereof.

7. Except as otherwise agreed and except for credit terms, Asiatic's standard terms and conditions for FOB deliveries shall apply to the deliveries referred to herein.

New England Petroleum Corporation
("Nepco")

Asiatic Petroleum Corporation
("Asiatic")

Grand Bahama Petroleum Company Limited
("Bahama")

Page 5 of 5

EXHIBIT B TO AFFIDAVIT OF
MICHAEL J. PAULLI

EXHIBIT B

NEW
ENGLAND
PETROLEUM
CORPORATION
625 THIRD AVENUE
NEW YORK, N.Y. 10022
(212) 758-7330

RICHARD G. WEINAND, EXECUTIVE VICE PRESIDENT

November 3, 1975

Mr. M. J. Paulli
Asiatic Petroleum Corporation
One Rockefeller Plaza
New York, New York 10022

Re: CONTRACTS ASC 72/530, 72/527

Dear Mr. Paulli:

As you know, we have been discussing over the past week the question raised by your latest proposed increase in prices. As we advised you, and you appeared to agree, such proposed increase is utterly unrealistic.

Accordingly, we hereby serve notice of termination pursuant to section 7(A) of the general terms and conditions of the above numbered contracts.

Of course, we are prepared to continue discussions in an effort to reach a commercial arrangement, which would envision a withdrawal of the within notice of termination and an extension of our time to exercise our right of termination through November 14, 1975; during such extended period, if agreed, to, we would not contemplate any liftings of fuel oil unless an interim price can be mutually agreed upon.

Sincerely yours,

NEW ENGLAND PETROLEUM CORPORATION

By _____

GRAND BAHAMA PETROLEUM COMPANY LIMITED

By _____

Termination withdrawn and time extended as aforesaid

ASIATIC PETROLEUM CORPORATION

By _____

CABLE "NEWENGPET" N.Y.
ITT 422-985
TWX 710-581-4357

MEMORANDUM OPINION OF JUDGE CHARLES E. STEWART, JR., DATED MARCH 11, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

In the Matter of GRAND BAHAMAS PETROLEUM COMPANY, LIMITED, :

Petitioner, : 76 Civ. 887

-against- :

ASIATIC PETROLEUM CORPORATION, :

Respondent. :

- x

MEMORANDUM

STEWART, DISTRICT JUDGE:

Petitioner has moved this court for an order quashing a notice to take depositions. The depositions were noticed by defendant for the limited purpose[1/] of determining whether petitioner Grand Bahamas Petroleum Company is "doing business" within the State of New York within the meaning of §1312(a) of the New York Business Corporation Law ("BCL") which would preclude petitioner from bringing suit in this court.

Section 1312(a)(BCL) provides:

> A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this state without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

1/ Ordered by this court at a conference on March 4, 1976.

Petitioner contends upon this motion that §1312(a) is inapplicable to the instant action which is brought under the Administrative Procedures Act to compel arbitration. First, petitioner contends that under New York State Law, §1312 would not be applied to a proceeding to compel arbitration or to enforce an arbitration award. Plaintiff cites the court to the case of Matter of Term Maritima, 11 Misc.2d 697 (Sup. Ct. 1957). In that case, the Court distinguished an "action" under the terms of the statute from a "special proceeding" and held that a special proceeding did not come within the language of the statute. While petitioner does note that the statute was subsequently amended, it fails to point out that the amendment covered the distinction made in the cited case by specifically including "special proceeding" within the language of the section. Thus, we cannot say that, under state law, §1312 would not be applied in an arbitration action or special proceeding.

Petitioner next contends that, under federal law, §1312 should not be applied in the instant action. In order to resort to the remedies provided by the Federal Arbitration Act, 9 U.S.C. 1 et seq., it is necessary to allege independent jurisdictional grounds. Metro Indus. Painting Corp. v. Terminal Construction Co., 287 F.2d 382 (2d Cir.), cert. denied, 368 U.S. 817 (1961); Joseph Muller Corp. Zurich v. Commonwealth Petrochemicals, Inc., 334 F. Supp. 1013 (S.D.N.Y. 1971). In the

instant case, petitioner alleges jurisdiction predicated upon diversity of citizenship, 28 U.S.C. §1331. In Stafford-Higgins Industries, Inc. v. Gaytone Fabrics, Inc., 300 F. Supp. 65 (S.D.N.Y. 1969), Judge Weinfeld found §1312 applicable to an action brought in federal court where jurisdiction was founded upon diversity.[2/] Petitioner contends, however, that the Stafford-Higgins rule is inapplicable in the instant case because, despite jurisdiction based upon diversity, there is a body of federal substantive law which governs the case. Robert Lawrence Co. v. Devonshire Fabrics, Inc., 271 F.2d 402 (2d Cir.), cert. denied, 364 U.S. 801 (1960); Lawn v. Franklin, 328 F. Supp. 791 (S.D.N.Y. 1971). We agree. It is unnecessary to look to state law for any purpose once jurisdiction has been obtained; and §1312 is not a jurisdictional requirement. Hot Roll Mfg. Co. v. Cerone Equipment Co., 38 A.D.2d 339, 329 N.Y.S.2d 466 (3d Dept. 1972). Although we believe the issue to be one of first impression, we think that §1312 does not apply in an action brought under Title 9 even where jurisdiction is predicated upon diversity of citizenship.

2/ The basis of the action in Stafford-Higgins is not clear from the opinion.

Therefore, petitioner's motion to quash the notice of deposition directed at adducing evidence of petitioner's doing business in New York for purposes of §1312 preclusion is granted.[3/]

SO ORDERED.

Chas. E. Stewart, Jr.
United States District Judge

Dated: New York, N. Y.
March 11, 1976.

3/ In view of this decision, it is unnecessary to reach the issue of whether 28 U.S.C. §1337 would be a proper jurisdictional basis in this action.

RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

JUDGE STEWART

FILED ENDORSED

United States District Court

Southern District of New York

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner

-against-

Asiatic Petroleum Corporation,

Respondent

---

76 Civ. 887(CES)

RESPONDENT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES ASIATIC PETROLEUM CORPORATION ("APC"), Respondent, and moves the Court as follows:

1. To dismiss the action because Petitioner is disqualified to file a petition in this Court against Respondent.

2. To dismiss the action for lack of jurisdiction because the controversy, as evidenced by the suit of Respondent in the United States District Court for the Southern District of Texas (evidenced by Exhibit S to the Petition herein) (hereinafter the "Texas action"), is not wholly between citizens of different states as alleged, and no other ground for federal jurisdiction is asserted. In support hereof, Respondent will show the Court as follows:

A. By its pleading in Count Two of the Complaint in the Texas action, APC has put Petitioner herein on notice that Petitioner "acting both alone and in concert, collusion and conspiracy with others yet unnamed and undetermined, willfully and maliciously appropriated the fuel oil referred to in paragraphs 3 and 6 of Count One to its own use and benefit knowing full well at the time it received such oil that it had no intention of paying for the same."

B. Among those with whom Petitioner acted in concert, collusion and conspiracy, there is included Mr. Edward Carey, a citizen of the State of New York.

C. Among those with whom Petitioner acted in concert, collusion and conspiracy, there is included New England Petroleum Corporation, a corporation with its principal place of business in the State of New York.

3. To dismiss the action for lack of jurisdiction over the subject matter because in the Texas action which was to Petitioner's knowledge filed over a week in advance of the instant action, the Court must first decide: (1) whether an agreement to arbitrate as herein alleged was made; (2) whether Asiatic Petroleum Corporation has failed, neglected or refused to perform any such arbitration agreement; (3) whether the execution of the arbitration agreement, if any, sought to be enforced herein was induced by the fraud of Grand Bahama Petroleum Company, Limited; (4) whether Grand Bahama Petroleum Company, Limited is estopped to assert the enforceability of the arbitration agreement, if any, relied upon herein; (5) whether Grand Bahama Petroleum Company, Limited has waived its right, if any, to assert the enforceability of the arbitration agreement sought to be enforced herein; (6) whether the parties to the Contract to Purchase Oil (as defined in Exhibit S of the Petition herein) intended a mandatory arbitration agreement as opposed to merely a permissive one, if any; (7) whether Grand Bahama Petroleum Company, Limited has abandoned the Contract to Purchase Oil together with any covenant therein to arbitrate; and (8) whether Grand Bahama Petroleum Company, Limited is barred by laches from seeking to enforce an arbitration agreement, if any.

4. To dismiss the action because the Petition fails to state a claim against Respondent upon which relief can be granted.

The Petition does not allege with sufficient certainty the issues which are arbitrable, or that Petitioner desires to arbitrate under the alleged arbitration clause of any particular contract.

RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

5. In the alternative, to dismiss or stay the action for the reason that under the circumstances and in consideration of the doctrine of abstention and comity, this Court should decline jurisdiction in favor of the pending Texas action.

Respectfully submitted,

John M. Rochford
One Rockefeller Plaza
New York, New York 10020

ATTORNEY FOR RESPONDENT

ATTORNEY-IN-CHARGE:
THOMAS R. McDADE
FULBRIGHT & JAWORSKI

MEMORANDUM ENDORSED BY
JUDGE CHARLES E. STEWART, JR., DATED MARCH 19, 1976

76 Civ. 887

ENDORSEMENT

Motion denied. Petitioner is not disqualified from filing its petition in this court. See Memorandum decision, March 11, 1976. The petition states a claim with sufficient particularity to withstand a motion to dismiss. In addition, there does appear to be diversity of citizenship between the parties in the instant case as well as jurisdiction over the subject matter of petitioner's complaint. See Transcript of March 4, 1976 conference.

Finally, we decline at this time to dismiss or stay the instant action by virtue of the pending action in Texas.

SO ORDERED.

Charles E. Stewart, Jr.
United States District Judge

Dated: New York, N. Y.
March 19, 1976

U.S. DISTRICT COURT
MAR 19 1976
S.D. N.Y.

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MEMORANDUM OPINION OF JUDGE CHARLES E. STEWART, JR., DATED MARCH 29, 1976

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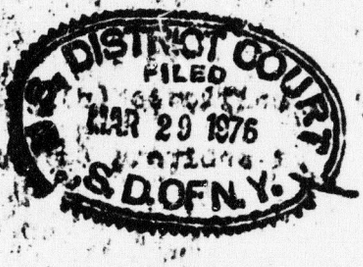

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of Grand Bahama Petroleum Company, Limited,

Petitioner,

-against-

Asiatic Petroleum Corporation,

Respondent.

76 Civ. 887

#44132

MEMORANDUM

STEWART, DISTRICT JUDGE:

Respondent Asiatic Petroleum Corporation ("Asiatic") has moved this court for reconsideration of its decision of March 11, 1976 or, in the alternative for certificate pursuant to 28 U.S.C. §1292(b) for leave to appeal that decision. In the decision, this court quashed Asiatic's notice of depositions which had been scheduled to adduce evidence that petitioner, Grand Bahama Petroleum Company ("Petco") is ineligible to bring this action by virtue of §1312 of the New York Business Corporation Law ("BCL").[1/]

We grant reconsideration of our decision, but having reviewed the prior and newly submitted papers, we reaffirm our decision.

1/ See Memorandum Decision, March 11, 1976.

MEMORANDUM OPINION OF JUDGE CHARLES E. STEWART, JR, DATED MARCH 29, 1976

Next, we consider whether a §1292(b) certificate is appropriate at this time. Section 1292(b) provides in pertinent part:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

The question of law here is whether BCL §1312 may be invoked to preclude a non-qualifying foreign corporation from maintaining an action predicated upon diversity jurisdiction to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq. We have no doubt that there is substantial ground for difference of opinion on this issue. See In Re Master Key Antitrust Litigation, slip op. at 1163 (2d Cir. Dec. 22, 1975) (and cases cited therein). Due to the procedural posture of this action, however, we have some reservations as to whether our order involves "a controlling question of law." Because that decision resulted in quashing the noticed depositions, the underlying factual question of whether petitioner was doing business in New York within the meaning of BCL

MEMORANDUM OPINION OF JUDGE CHARLES
E. STEWART, JR, DATED MARCH 29, 1976

§1312 has not been determined.[2/] If the facts were to develop that Petco did not do business in New York, there would be no issue of the applicability of §1312 to the case. Nevertheless, we will grant Asiatic's petition for §1292(b) certification, since if petitioner does business in New York and §1312 is applicable, the action would terminate at once without the necessity for trial by jury of the present issues before the court pursuant to 9 U.S.C. §4. Thus, resolution of the legal issue "may materially advance the ultimate termination of the litigation." See Northland Paper Co. v. Mohawk Tublet Co., 271 F. Supp. 763 (S.D.N.Y. 1967).

SO ORDERED.

Charles E. Stewart, Jr.
United States District Judge

Dated: New York, N. Y.
March 29, 1976.

2/ We note that resolution of this underlying factual issue would not be relevant to the question of diversity jurisdiction, since there is no allegation that New York is petitioner's principal place of business. Cf. Bergen Shipping Co. v. Japan Marine Services, 386 F. Supp. 430 (S.D.N.Y. 1974).

ORDER GRANTING ASIATIC PETROLEUM CORPORATION LEAVE TO APPEAL

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 29th day of April, one thousand nine hundred and seventy-six

In the Matter of

GRAND BAHAMA PETROLEUM COMPANY, LIMITED,

Petitioner-Respondent,

-against-

ASIATIC PETROLEUM CORPORATION,

Respondent-Petitioner.

No. 76-8146

5/11/76

It is hereby ordered that the motion made herein by counsel for the petitioner / Asiatic Petroleum Corporation, respondent below,

by notice of motion dated April 8, 1976 for leave to appeal pursuant to 28 U.S.C. § 1292(b)

be and it hereby is granted

J. Edward Lumbard

Henry J. Friendly

Wilfred Feinberg

Circuit Judges

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